

LIBRARY
SUPREME COURT U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 483

LAWRENCE SPEISER, APPELLANT,

vs.

**JUSTIN A. RANDALL, AS ASSESSOR OF CONTRA
COSTA COUNTY, STATE OF CALIFORNIA**

No. 484

DANIEL PRINCE, APPELLANT,

vs.

**CITY AND COUNTY OF SAN FRANCISCO,
A MUNICIPAL CORPORATION**

**APPEALS FROM THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

**FILED SEPTEMBER 19, 1957
PROBABLE JURISDICTION NOTED NOVEMBER 25, 1957**

Supreme Court of the United States

OCTOBER TERM, 1957

No. 483

LAWRENCE SPEISER, APPELLANT,

vs.

JUSTIN A. RANDALL, AS ASSESSOR OF CONTRA
COSTA COUNTY, STATE OF CALIFORNIA

No. 484

DANIEL PRINCE, APPELLANT,

vs.

CITY AND COUNTY OF SAN FRANCISCO,
A MUNICIPAL CORPORATION

APPEALS FROM THE SUPREME COURT OF THE
STATE OF CALIFORNIA

INDEX

	Original	Print
Proceedings in the Supreme Court of the State of California		
• Caption	2	1
• Record from the Superior Court of Contra Costa County in case of Speiser v. Randall, No. 60660 and in case of Speiser v. Foley, No. 60661	4	2

Record from the Superior Court of Contra Costa
County in case of Speiser v. Randall, No. 60660
and in case of Speiser v. Foley, No. 60661—
Continued

	Original	Print
Notice of appeal	4	2
Notice to prepare record on appeal	5	2
Complaint for declaratory relief	7	3
Answer to complaint in case No. 60660	15	9
Findings of fact and conclusions of law	17	10
Judgment	25	16
Stipulation in case No. 60660	28	18
Order consolidating cases	32	21
Clerk's certificate (omitted in printing)	34	21
Opinion, Shenk, J.	35	22
Dissenting opinion, Traynor, J.	38	23
Dissenting opinion, Carter, J.	39	23
Notice of appeal in case No. S.F. 19322	40	24
Affidavit of service (omitted in printing)	44	27
Clerk's certificate (omitted in printing)	45	27

Proceedings in the Supreme Court of the State of
California

Caption	46	27
---------------	----	----

Record from the Superior Court of the State of
California in and for the City and County of
San Francisco

Complaint for recovery of taxes paid under pro- test	49	28
---	----	----

Exhibits "A" (1) & (2)—Letters from Daniel
Prince to Russell L. Wolden, Assessor, dated
July 16, 1954 and July 23, 1954

	59	34
--	----	----

Answer to complaint	63	37
---------------------------	----	----

Defendant's exhibit "A"—Blank form for
Property Statement and Claim for Veteran
Exemption

	69	43
--	----	----

Stipulation	70	45
-------------------	----	----

Memorandum opinion and decision	78	50
---------------------------------------	----	----

Conclusions of law	92	59
--------------------------	----	----

Judgment after trial by court	95	61
-------------------------------------	----	----

Notice of entry of judgment	97	62
-----------------------------------	----	----

Notice of appeal	98	63
------------------------	----	----

INDEX

iii

Record from the Superior Court of the State of California in and for the City and County of San Francisco—Continued

	Original	Print
Notice to clerk to prepare clerk's transcript and designation of record on appeal	99	63
Clerk's certificate (omitted in printing)	100	64
Opinion, Shenk, J.	102	64
Dissenting opinion, Traynor, J.	107	67
Dissenting opinion, Carter, J.	108	67
Notice of appeal	109	68
Clerk's certificate (omitted in printing)	114	71
Order noting probable jurisdiction	115	71

[fol. A] [File endorsement omitted]

[fol. 2]

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

LAWRENCE SPEISER, Plaintiff and Respondent,

v.

JUSTIN A. RANDALL, as Assessor of the County of Contra
Costa, State of California, Defendant and Appellant.

CLERK'S TRANSCRIPT ON APPEAL—Filed June 22, 1955

From The Superior Court of Contra Costa County

Hon. Wakefield Taylor, Presiding, Hon. Harold Jacoby,
Hon. Hugh H. Donoxan, Hon. Homer W. Patterson, Hon.
Norman A. Gregg, *Sitting en Banc*.

For Defendant and Appellant:

Francis W. Collins, District Attorney, Contra Costa
County, by: Thomas F. McBride, by: George W. McClure,
Deputies Dist. Atty. and Associate, Hall of Records,
Martinez, California.

For Plaintiff and Respondent:

Lawrence Speiser, In Propria Persona, 503 Market
Street, San Francisco, California and Joseph Landisman,
413 Tenth Street, Richmond, California.

[fol. 4] [File endorsement omitted]

IN SUPERIOR COURT OF CONTRA COSTA COUNTY
 No. 60660 (Consolidated Cases)
 No. 60661

NOTICE OF APPEAL—Filed May 2, 1955

To the Clerk of the Above-Entitled Court, to Lawrence Speiser, Plaintiff, and to Joseph Landisman, His Attorney:

You will please take notice that the defendants herein hereby appeal to the Supreme Court of the State of California from the judgment entered herein on March 9, 1955, in favor of plaintiff and against defendant and from all of said judgment.

Dated: May 2, 1955.

Respectfully submitted,

Francis W. Collins, District Attorney, Contra Costa County, California; Clifford C. Anglim, City Attorney of the City of El Cerrito, Contra Costa County, California, by: /s/ Thos. F. McBride, by: /s/ George W. McClure, Deputies Dist. Atty. and Associates.

[fol. 5] [File endorsement omitted]

IN SUPERIOR COURT OF CONTRA COSTA COUNTY
 No. 60660 (Consolidated Cases)
 No. 60661

NOTICE TO PREPARE RECORD ON APPEAL—Filed June 1, 1955

To the Clerk of the Above-Entitled Court, to Lawrence Speiser, plaintiff and to Josephe (sic) Landisman, his attorney:

You will please take notice that the defendants herein hereby designate the following named papers as their

record on appeal and hereby direct the Clerk of this court to prepare said record on appeal containing said papers:

- (1) Plaintiff's Complaint for declaratory relief
 - (2) Answer of defendants
 - (3) Stipulation by plaintiff and defendants
 - (4) Court's order of August 30, 1954, consolidating these cases and ordering a hearing en banc.
 - (5) Plaintiff's opening brief
 - (6) Reply brief of defendants.
 - (7) Plaintiff's reply brief
 - (8) Findings of fact and conclusions of law
 - (9) Judgment of the court
- [fol. 6] (10) Defendants' notice of appeal

Dated this 31st day of May, 1955.

Respectfully submitted,

Francis W. Collins, District Attorney, County of Contra Costa, State of California; Clifford C. Anglim, City Attorney of the City of El Cerrito, Contra Costa County, State of California, by /s/ Thos. F. McBride, Deputy District Attorney and Associate.

[fol. 7] [File endorsement omitted]

IN SUPERIOR COURT OF CONTRA COSTA COUNTY

No. 60660

COMPLAINT FOR DECLARATORY RELIEF—Filed May 27, 1954

Plaintiff complains of defendant and alleges:

1. That the plaintiff is a legal resident of the State of California residing in the City of El Cerrito and County of Contra Costa.

2. That the plaintiff and his wife own property not in excess of the value of \$5,000 nor less than \$1,000.

3. That on June 23, 1943, the plaintiff was inducted into the Army of the United States; that on December 22, 1944 plaintiff received an honorable discharge as an enlisted man; that on December 23, 1944 plaintiff received a commission as Second Lieutenant in the Air Corps and served in that capacity until January 19, 1946 when he received his Certificate of Service and was relieved from active duty as a 1st Lieutenant; that from June 12, 1945 to October 12, 1945 plaintiff served as a navigator with the 20th Air Force operating out of Saipan, the Mariana Islands, on combat bombing missions over Japan.

[fol. 8] 4. That pursuant to the provisions of Article XIII, Section 1 $\frac{1}{4}$ of the Constitution of California, plaintiff is entitled to the property tax exemption therein provided in the sum of \$1,000.00.

5. That heretofore, and for the fiscal or tax years of 1951-1952, 1952-1953 and 1953-1954 plaintiff applied for the aforesaid tax exemption and said applications were granted.

6. That on or about November 4, 1952, the Constitution of the State of California was amended to add a new section numbered Article XX, Section 19 which provides that no person who advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall receive any exemption from any tax imposed by the State or any other local subdivision thereof, and further authorizing the legislature to enact such laws as might be necessary to effectuate the provisions of the aforesaid section.

7. That on or about July 1, 1953, the legislature of the State of California enacted a law (Stats. 1953, Ch. 1503) adding Section 32 to the Revenue and Taxation Code of the State of California which provides that any claim for property tax exemption must contain a declaration that the person claiming such exemption does not advocate the overthrow of the Government of the United States or the State by force or violence or other

unlawful means, nor advocate the support of a foreign [fol. 9] government against the United States in the event of hostilities, and further providing that it be a felony to make such declaration knowing it to be false.

8. That defendant is, and was at all times mentioned in connection with plaintiff's application for tax exemption, the Assessor of the Contra Costa County, State of California.

9. That on or about March 31, 1954, plaintiff filed in the office of defendant in the City of Richmond, Contra Costa County, an application for property tax exemption for the fiscal or tax year 1954-1955 as required by law, which application disclosed that plaintiff was entitled to the property tax exemption afforded him as a veteran by the provisions of Article XIII, Section 1 $\frac{1}{4}$ of the Constitution (sic) of the State of California.

10. That the aforesaid application for property tax exemption was in all respects duly executed except that plaintiff struck out and did not subscribe to the declaration in the said application which contained the language set forth in the aforementioned Section 32 of the Revenue and Taxation Code.

11. That plaintiff declined to execute the aforesaid declaration in connection with his application for the said veteran's property tax exemption upon the grounds that the requirement that plaintiff execute such a declaration as a condition for tax exemption as a veteran violated his rights of conscience and privacy and abridged freedoms guaranteed by the Constitution of the United States and the State of California, more particularly set forth hereinafter.

[fol. 10] 12. That on April 27, 1954, defendant denied plaintiff's claim for the aforesaid property tax exemption upon the sole ground that the said application for veterans tax exemption did not contain the declaration as required by the aforesaid Section 32 of the Revenue and Taxation Code.

13. That Article XX, Section 19 of the Constitution of the State of California and Section 32 of the Revenue and Taxation Code of the State of California, on their face and as construed and applied to plaintiff, are unconstitutional and invalid upon the following grounds:

a. The said enactments violate the provisions of the First and Fourteenth Amendments to the Constitution of the United States in that they abridge plaintiff's freedoms of conscience, speech, press, assembly and the right to petition for redress of grievances and therefore deprive plaintiff of his liberty and property without due process of law.

b. The said enactments violate the provisions of the First and Fourteenth Amendments to the Constitution of the United States in the manner aforesaid in that by reason of the vagueness, uncertainty and ambiguity of the language contained in the said enactments, they constitute a prior restraint on the freedoms guaranteed by the First and Fourteenth Amendments and facilitate the discriminatory enforcement of the law and the penalizing of utterances, protected from governmental abridgment under the Constitution.

c. That said enactments violate the First and Four-[fol. 11]teenth Amendments to the Constitution of the United States in the manner aforesaid in that they abridge plaintiff's freedoms of speech, press, assembly and the right to petition for redress of grievances without any declaration, evidence or showing of the existence of a clear and present danger or clear and probable danger, or any danger at all.

d. The said enactments deprive plaintiff of his liberty and property without trial or hearing, accusation, confrontation, right to cross-examination or the assistance of counsel; subvert the presumption of innocence and alter the rules of evidence; and attain plaintiff by legislative fiat, all in violation of the due process clause of the Fourteenth Amendment and the provisions of Article I, Section 9, Clause 3 of the Constitution of the United States.

e. The said enactments violate the provisions of the First and Fourteenth Amendments in the manner aforesaid in that they require plaintiff to relinquish his freedoms of conscience, speech, press, assembly and the right to petition for redress of grievances as a condition for obtaining the aforesaid veterans property tax exemption granted to plaintiff by the Constitution of the State of California.

f. The said enactments violate the provisions of the Fourteenth Amendment in the manner aforesaid in that they deny to plaintiff the equal protection of the laws.

g. The said enactments violate the provisions of the Fourteenth Amendment in the manner aforesaid in that [fol. 12] they abridge plaintiff's immunities and privileges as a citizen of the United States.

h. The said enactments purport to regulate and restrict subject matter entirely within the cognizance and province of the federal government under the Constitution of the United States, and the Congress of the United States by legislative enactments has preempted and wholly occupied the field covered by the said enactments.

i. The said enactments deprive plaintiff of rights guaranteed to him by the Constitution of the State of California and violate the provisions thereof in the following respects: deprive plaintiff of his inalienable rights, Article I, Section 1; undermine the purpose of Government, Article I, Section 2; deprive plaintiff of his liberty of conscience, Article I, Section 4; deprive plaintiff of his liberty of speech and press, Article I, Section 9; deprive plaintiff of his right to assemble and petition, Article I, Section 10; are contrary to the requirements for uniform general laws, Article I, Section 11; deprive plaintiff of his liberty without due process of law, Article I, Section 13; constitute bills of attainder, Article I, Section 16; deprives plaintiff of his privileges and immunities, Article I, Section 21; violate the provision for separation of powers provided in the Constitution, Article III, Section 1; constitute special laws in violation of Article IV, section 25, paragraphs "Second", "Tenth", "Nineteenth"

and "Twentieth"; deprive plaintiff of his veterans property tax exemption, Article XX, Section 11¼.

[fol.13] j. Assembly Constitutional Amendment No. 1 enacted by the legislature of the State of California in 1950, which was submitted to the electorate and finally adopted as Article XX, Section 19, embraced more than one subject and therefore violated the provisions of Article IV, Section 24 of the Constitution of the State of California.

14. That a controversy has arisen and exists between plaintiff and defendant as aforesaid, which controversy the plaintiff seeks to have adjudicated and determined by this Court under the provisions of the Declaratory Judgment Act.

Wherefore plaintiff prays for judgment adjudicating and declaring that Article XX, Section 19 of the Constitution of the State of California and Section 32 of the Revenue and Taxation Code of the State of California are unconstitutional and invalid, on their face and as construed and applied to the plaintiff herein; that plaintiff is entitled to a property tax exemption for the fiscal or tax year 1954-1955 in the sum of \$1,000 pursuant to the provisions of Article XIII, Section 11¼ of the Constitution of the State of California; and that plaintiff have such other and further relief as shall be just and equitable in the premises, together with costs and disbursements herein.

/s/ Lawrence Speiser, /s/ Joseph Landisman, Attorneys for Plaintiff.

[fol.14] *Duly sworn to by Lawrence Speiser, jurat omitted in printing.*

[fol. 15] • [File endorsement omitted]

IN SUPERIOR COURT OF CONTRA COSTA COUNTY

No. 60660

ANSWER—Filed June 30, 1954

Comes now the defendant and for answer to the complaint on file herein admits, denies and alleges as follows, to wit:

I

The defendant having no information or belief on the subjects mentioned in Paragraphs 1, 2 and 3 of plaintiff's complaint sufficient to enable him to answer any of the allegations therein contained, and placing his denial on that ground, denies each and every allegation set forth in said Paragraphs 1, 2 and 3.

II

Answering the allegations contained in Paragraph 4 of plaintiff's complaint, defendant denies each and every, all and singular, the allegations in said paragraph contained.

III.

Answering the allegations contained in Paragraph 9 of plaintiff's complaint, beginning on Page 2, at line 30, to and including the end of said Paragraph 9, defendant denies each and every, all and singular, the allegations in said portion of said paragraph contained.

[fol. 16]

IV

Answering the allegations of Paragraph 11 of plaintiff's complaint, beginning on Page 3, Line 8, with the words "Upon the grounds", continuing down to and including the end of said paragraph, defendant denies each and every, all and singular, the allegations contained in said portion of said paragraph.

V.

Answering the allegations contained in Paragraph 13 a, b, c, d, e, f, g, h, i, and j of plaintiff's complaint, defendant denies each and every, all and singular, the allegations in said paragraphs contained.

Wherefore, defendant prays for judgment adjudicating and declaring that Article XX, Section 19, of the Constitution of the State of California, and Section 32 of the Revenue and Taxation Code of the State of California, are constitutional and valid; that plaintiff is not entitled to a property tax exemption for the fiscal or tax year, 1954-1955, in any sum whatsoever, and for such other and further relief is (sic) is meet and proper in the premises, together with costs and disbursements incurred herein.

Dated this 30 day of June, 1954.

Justin A. Randall, as Assessor of the County of Contra Costa, State of California, by: Francis W. Collins, District Attorney of the County of Contra Costa, State of California, by: Thomas F. McBride, Assistant Attorney for Defendant.

[fol. 17]

[File endorsement omitted]

IN SUPERIOR COURT OF CONTRA COSTA COUNTY

No. 60660

No. 60661

(Consolidated Cases)

Findings of Fact and Conclusions of Law—

Filed March 8, 1955

The above-entitled cases having been consolidated pursuant to stipulation and order of the court came on regularly for trial and oral argument before the Superior Court of the County of Contra Costa, Honorable Wakefield Taylor, presiding, with the Honorable Harold Jacoby,

Hugh M. (sic) Donovan, Homer W. Patterson, and Norman A. Gregg sitting *en banc* without a jury on the 23rd day of December, 1954; Messrs. Lawrence Speiser, in propria persona and Joseph Landisman, appearing as counsel for the plaintiff, and Francis W. Collins, District Attorney of the County of Contra Costa, Thomas W. McBride, Assistant District Attorney of the County of Contra Costa and George W. McClure, Deputy District Attorney of the County of Contra Costa, appearing for defendant Justin A. Randall, as Assessor of the County of Contra Costa, and Clifford C. Anglim, City Attorney of the City of El Cerrito, appearing for defendant Mary-[fol. 18] ellen Foley, as Assessor of the City of El Cerrito.

The cases having been submitted to the Court on a written stipulation of facts and on written briefs and oral argument, and the Court being fully advised in the premises, finds: it is true:

FINDINGS OF FACT

I.

That the plaintiff is a legal resident of the State of California residing in the City of El Cerrito and County of Contra Costa.

II.

That the plaintiff and his wife own property not in excess of the value of \$5,000 nor less than \$1,000.

III.

That the plaintiff is an honorably discharged veteran of the United States Army Air Force, after service in World War II, and by reason of such service is entitled to the property tax exemption, pursuant to the provisions of Article XIII, Section 1 $\frac{1}{4}$, of the Constitution of the State of California.

IV.

That on or about November 4, 1952, the Constitution of the State of California was amended to add a new

section numbered Article XX, Section 19, which provides as follows:

"Notwithstanding any other provision of this Constitution, no person or organization which advocates the overthrow of the Government of the United States [fol. 19] or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall:

"(b) Receive any exemption from any tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State.

"The Legislature shall enact such laws as may be necessary to enforce the provisions of this section."

V.

That on or about July 1, 1953, the Legislature of the State of California enacted a law (Stats. 1953, Ch. 1503) adding Section 32 to the Revenue and Taxation Code of the State of California, which provides as follows:

"Any statement, return, or other document in which is claimed any exemption, other than the householder's exemption, from any property tax imposed by this State or any county, city or county, city district, political subdivision, authority, board, bureau, commission or other public agency of this State shall contain a declaration that the person or organization making the statement, return, or other document does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor ad- [fol. 20] vocate the support of a foreign government against the United States in event of hostilities. If any such statement, return, or other document does not contain such a declaration, the person or organization making such statement, return, or other document shall not receive any exemption from the tax

to which the statement, return, or other document pertains. Any person or organization who makes such declaration knowing it to be false is guilty of a felony. This section shall be construed so as to effectuate the purpose of Section 19 of Article XX of the Constitution."

VI.

That the defendant, Justin A. Randall, is, and was at all times mentioned in connection with plaintiff's application for tax exemption, the Assessor of the County of Contra Costa, State of California; and that the defendant, Maryellen Foley, is, and was at all times mentioned in connection with plaintiff's application for tax exemption, the Assessor of the City of El Cerrito, County of Contra Costa, State of California.

VII.

That on or about March 31, 1954, the plaintiff filed in the office of defendant Randall in the City of Richmond and defendant Foley in the City of El Cerrito, both in Contra Costa County, applications for property tax exemption for the fiscal or tax year 1954-1955 as required by law, which applications disclosed that plaintiff was entitled to the property tax exemption afforded him as [fol. 21] a veteran by the provisions of Article XIII, Section 1 $\frac{1}{4}$, of the Constitution of the State of California.

VIII.

That the aforesaid applications for property tax exemption were in all respects duly executed except that plaintiff struck out and did not subscribe to the declarations in the said applications which contained the language set forth in the aforementioned Section 32 of the Revenue and Taxation Code, to wit: "that the applicant did not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in the event of hostilities."

IX.

That on April 21, 1954, defendant Foley denied plaintiff's claim for the aforesaid property tax exemption and on April 27, 1954, defendant Randall denied plaintiff's claim for property tax exemption, both denials being upon the sole ground that the said applications for veteran's property tax exemption did not contain the declaration required by the aforesaid Section 32 of the Revenue and Taxation Code.

X.

That the aforestated portion of Section 19, Article XX of the Constitution of the State of California and Revenue and Taxation Code Section 32, on their faces, and as construed and applied are null and void and violate the 1st and 14th Amendments to the United States Constitution in infringing on freedom of speech.

[fol. 22]

XI.

That said Section 19, Article XX of the Constitution of the State of California and Revenue and Taxation Code Section 32 violate the 1st Amendment and the due process and equal protection clauses of the 14th Amendment of the United States Constitution in requiring those who advocate doctrines unacceptable to the majority of citizens of the State to pay a larger tax than those who refrain from expressing such doctrines.

XII.

That said Section 19, Article XX of the Constitution of the State of California and Revenue and Taxation Code Section 32 violate the due process clause of the 14th Amendment of the United States Constitution in not reasonably tending to avert any clear and present danger to the state.

XIII.

That Revenue and Taxation Code Section 32 is further null and void and unconstitutional in creating an unreasonable classification and is being discriminatory legisla-

tion in requiring declarations of non-advocacy only from claimants for property tax exemptions and thus violates the equal protection clause of the 14th Amendment of the United States Constitution and Article I, Section 21 & Article IV, Section 25, subdivisions (sic) 10, 19, 20 and 33 of the Constitution of the State of California.

From the foregoing facts, the court concludes:

CONCLUSIONS OF LAW

1) That the aforestated portion of Section 19, Article [fol. 23] XX of the Constitution of the State of California and Revenue and Taxation Code Section 32, on their faces, and as construed and applied are null and void and violate the 1st and 14th Amendments to the United States Constitution in infringing on freedom of speech.

2) That said Section 19, Article XX of the Constitution of the State of California and Revenue and Taxation Code Section 32 violate the 1st Amendment and the due process and equal protection clauses of the 14th Amendment of the United States Constitution in requiring those who advocate doctrines unacceptable to the majority of citizens of the State to pay a larger tax than those who refrain from expressing such doctrines.

3) That said Section 19, Article XX of the Constitution of the State of California and Revenue and Taxation Code Section 32 violate the due process clause of the 14th Amendment of the United States Constitution in not reasonably tending to avert any clear and present danger to the state.

4) That Revenue and Taxation Code Section 32 is further null and void and unconstitutional in creating an unreasonable classification and in being discriminatory legislation in requiring declarations of non-advocacy only from claimants for property tax exemptions and thus violates the equal protection clause of the 14th Amendment of the United States Constitution and Article I, Section 21, and Article IV, Section 25, subdivisions 10, 19, 20 and 33 of the Constitution of the State of California.

5) That plaintiff is entitled to a veteran's property [fol. 24] tax exemption for the fiscal or tax year 1954-1955 in the sum of \$1000 pursuant to the provisions of Article XIII, Section 1 $\frac{1}{4}$ of the Constitution of the State of California.

6) That plaintiff is entitled to judgment against the defendants and to his costs as against defendants.

Let Judgment Be Entered Accordingly.

Dated: March 1st, 1955.

~~February~~ O.K.

H.J.

/s/ Harold Jacoby, /s/ Hugh H. Donovan,
/s/ Homer W. Patterson, /s/ Norman A. Gregg;
/s/ Wakefield Taylor, Judges of the Superior
Court of the County of Contra Costa, *En Banc*.

[fol. 25]

[File endorsement omitted]

IN SUPERIOR COURT OF CONTRA COSTA COUNTY

No. 60660

No. 60661

(Consolidated Cases)

JUDGMENT—March 1, 1955

The above-entitled cases having been consolidated pursuant to stipulation and order of the court came on regularly for trial and oral argument before the Superior Court of the County of Contra Costa, Honorable Wakefield Taylor, presiding, with the Honorable Harold Jacoby, Hugh M. (sic) Donovan, Homer W. Patterson, and Norman A. Gregg sitting *en banc* without a jury on the 23rd day of December, 1954; Messrs. Lawrence Speiser, in propria persona and Joseph Landisman, appearing as counsel for the plaintiff, and Francis W. Collins, District Attorney of the County of Contra Costa, Thomas W. McBride, Assistant District Attorney of the County of Contra Costa and George W. McClure, Deputy District Attorney of the County of Contra Costa, appearing for

defendant Justin A. Randall, as Assessor of the County of Contra Costa, and Clifford C. Anglim, City Attorney of the City of El Cerrito, appearing for defendant Maryellen Foley, as Assessor of the City of El Cerrito.

And it appearing to the court that findings of fact and [fol. 26] conclusions of law have been signed and filed herein, this court enters its judgment as follows:

It Is Ordered, Adjudged and Decreed:

1. That Article XX, Section 19 of the Constitution of the State of California is unconstitutional and invalid on its face and as construed and applied to the plaintiff.

2. That Section 32 of the Revenue and Taxation Code is unconstitutional and invalid, on its face and as construed and as applied to the plaintiff.

3. That plaintiff be granted a veteran's property tax exemption from the taxes of the County of Contra Costa and the City of El Cerrito for the fiscal or tax year 1954-1955 in the sum of \$1000 pursuant to the provisions of Article XIII, Section 11 $\frac{1}{4}$ of the Constitution of the State of California.

4. That plaintiff has judgment against said defendants, Justin A. Randall, as Assessor of the County of Contra Costa, and Maryellen Foley, as Assessor of the City of El Cerrito, and for his costs herein incurred.

March O.K. H.J.

Dated: This 1st day of February, 1955.

/s/ Harold Jacoby, /s/ Hugh H. Donovan,
/s/ Homer W. Patterson, /s/ Norman A. Gregg,
/s/ Wakefield Taylor, Judges of the Superior
Court.

[fol. 27] Endorsed:

Entered March 9, 1955

GB

Judgment Book 89, Page 265

W. T. Paasch, County Clerk

By Gladys Brooks, Deputy

[fol. 28]

[File endorsement omitted]

IN SUPERIOR COURT OF CONTRA COSTA COUNTY

No. 60660

STIPULATION—Filed August 30, 1954

It Is Hereby Stipulated by and between the respective parties hereto that:

1. The case of Lawrence Speiser vs. Maryellen Foley, as Assessor of the City of El Cerrito, Contra Costa County, Superior Court Action No. 60661, may be consolidated with the above entitled action for trial and argument.

2. That the plaintiff is a legal resident of the State of California residing in the City of El Cerrito and County of Contra Costa.

3. That the plaintiff and his wife own property not in excess of the value of \$5,000 nor less than \$1,000.

4. That the plaintiff is an honorable discharged veteran of the United States Army Air Force, after service in World War II, and by reason of such service is entitled to the property tax exemption, pursuant to the provisions of Article XIII, Section 11 $\frac{1}{4}$, of the Constitution of the State of California.

5. That on or about November 4, 1952, the Constitution [fol. 29] of the State of California was amended to add a new section numbered Article XX, Section 19, which provides that no person who advocates the overthrow of the Government of the United States or of the State by the force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall receive any exemption from any tax imposed by the State or any other local subdivision thereof, and further authorizing the legislature to enact such laws as might be necessary to effectuate the provisions of the aforesaid section.

6. That on or about July 1, 1953, the legislature of the State of California enacted a law (Stats. 1953, Ch. 1503)

adding Section 32 to the Revenue and Taxation Code of the State of California which provides that any claim for property tax exemption must contain a declaration that the person claiming such exemption does not advocate the overthrow of the Government of the United States or of the State by force or violence or other unlawful means, nor advocate the support of a foreign government against the United States in the event of hostilities, and further providing that it be a felony to make such declaration knowing it to be false.

7. That the defendant, Justin A. Randall, is, and was at all times mentioned in connection with plaintiff's application for tax exemption, the Assessor of the County of Contra Costa, State of California; and that the defendant, Maryellen Foley, is, and was at all times mentioned [fol. 30] in connection with plaintiff's application for tax exemption, the Assessor of the City of El Cerrito, County of Contra Costa, State of California.

8. That on or about March 31, 1954, the plaintiff filed in the office of defendant Randall in the City of Richmond and defendant Foley in the City of El Cerrito, both in Contra Costa County, applications for property tax exemption for the fiscal or tax year 1954-1955 as required by law, which applications disclosed that plaintiff was entitled to the property tax exemption afforded him as a veteran by the provisions of Article XIII, Section 11 $\frac{1}{4}$, of the Constitution of the State of California.

9. That the aforesaid applications for property tax exemption were in all respects duly executed except that plaintiff struck out and did not subscribe to the declarations in the said applications which contained the language set forth in the aforementioned Section 32 of the Revenue and Taxation Code, to wit, "that the applicant did not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in the event of hostilities."

10. That on April 21, 1954, defendant Foley denied plaintiff's claim for the aforesaid property tax exemption and on April 27, 1954, defendant Randall denied plaintiff's claim for property tax exemption, both denials being upon the sole ground that the said applications for veterans property tax exemption did not contain the declaration required by the aforesaid Section 32 of the Revenue [fol. 31] and Taxation Code.

11. That after this stipulation has been entered into and filed, the plaintiff shall serve and file his opening brief, consisting of one original and five copies, within 20 days with the Superior Court. Thereafter defendant shall serve and file defendant's brief within 20 days after filing of plaintiff's opening brief. Thereafter, plaintiff may have 10 days in which to serve and file a reply brief after the filing of defendant's brief. By stipulation the parties may extend each of such periods for not more than 20 days, and thereafter the time may be extended only by the Presiding Judge of the Superior Court.

12. After the filing of the briefs, the cases shall be set for oral argument at the earliest possible mutually agreeable time.

Dated: July 16, 1954.

Lawrence Speiser, Joseph Landisman, Attorneys for Plaintiff.

August 10, 1954.

Francis W. Collins, District Attorney, by Thomas F. McBride, Asst., Attorney for Defendant, Justin A. Randall.

Clifford Anglim, Attorney for Defendant, Maryellen Foley.

[fol. 32] [File endorsement omitted]

IN SUPERIOR COURT OF CONTRA COSTA COUNTY

No. 60660

No. 60661

(Consolidated Cases)

ORDER CONSOLIDATING CASES—August 30, 1954

Pursuant to Stipulation on file herein, entered into by and between the parties hereto, by and through their attorneys respectively,

It Is Hereby Ordered that actions number 60661 and 60660 be and are hereby consolidated for trial and argument.

Pursuant to Stipulation on file herein,

It Is Further Ordered that in the above entitled actions plaintiff shall serve and file an opening brief within twenty (20) days from date of filing this Order; thereafter defendant shall serve and file a reply brief within twenty (20) days after the filing of plaintiff's opening brief; thereafter plaintiff may have ten (10) days in which to serve and file a reply brief.

It Is Further Ordered that after the filing of all briefs the cases shall be set for oral argument at a time set by the Court before the entire Court sitting en banc.

[fol. 33] Done in open court this 30 day of August, 1954.

Wakefield Taylor, Judge of the Superior Court.

Copy of the foregoing Order received this 30th day of August, 1954

Francis W. Collins, District Attorney, by Thomas F. McBride, Assistant.

[fol. 34] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 35] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

S.F. 19322

LAWRENCE SPEISER, Plaintiff and Respondent,

v.

JUSTIN A. RANDALL, as Assessor of Contra Costa County,
Defendant and Appellant.

S.F. 19323

LAWRENCE SPEISER, Plaintiff and Respondent,

v.

MARY ELLEN FOLEY, as Assessor of City of El Cerrito,
Defendant and Appellant.

OPINION—Entered April 24, 1957

This is an appeal by the defendants from a single judgment in two consolidated cases in which the common plaintiff, Lawrence Speiser, sought declaratory relief against the Assessors of the County of Contra Costa and the City of El Cerrito located in that county to the effect that section 19 of article XX of the Constitution and section 32 of the [fol. 36] Revenue and Taxation Code are invalid and that he is entitled to the veterans' property tax exemption provided for in section 1-1/4 of article XIII of the Constitution notwithstanding the provisions of those enactments.

The material facts in these two cases are the same and appear by stipulation of the parties in the trial court. The plaintiff is a resident of the City of El Cerrito and the County of Contra Costa. He meets all of the requirements for the veterans' tax exemption except that in his application for the tax year 1954-1955 he failed and refused to subscribe to the nonsubversive oath contained in the appli-

cation form supplied by the assessors pursuant to article XX, section 19 of the Constitution and section 32 of the Revenue and Taxation Code. His applications were rejected. He thereupon commenced these actions for declaratory relief. The trial court held that the constitutional provisions and the code section were invalid as an infringement upon the right of free speech guaranteed by the federal Constitution, and that section 32 was invalid for the reason that in failing to require an oath from the members of all groups otherwise entitled to tax exemptions an unreasonable classification was imposed. The judgment ordered that the plaintiff be granted the exemption.

The contentions urged on appeal in these cases are the same as those presented in *Prince v. City and County of [fol. 37] San Francisco*, ante, p. —. For reasons stated in the opinions in that case and in *The First Unitarian Church of Los Angeles v. County of Los Angeles*, ante, p. —, the defendants should have prevailed.

The judgment is reversed.

Shenk, J.

We Concur: Schauer, J., Spence, J., McComb, J.

[fol. 38]

DISSENTING OPINION

For the reasons stated in my dissenting opinion in *First Unitarian Church v. County of Los Angeles*, ante p. —, I would affirm the judgment.

Traynor, J.

I Concur: Gibson, C.J.

[fol. 39]

DISSENTING OPINION

For the reasons stated in my dissenting opinion in *First Unitarian Church of Los Angeles v. County of Los Angeles*, ante p. —, I would affirm the judgment.

Carter, J.

[fol. 40] [File endorsement omitted]

IN SUPREME COURT OF THE STATE OF CALIFORNIA
No. S.F. 19322

LAWRENCE SPEISER, Appellant,

v.

JUSTIN A. RANDALL, as Assessor of Contra Costa County,
Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed May 27, 1957

I

Notice Is Hereby Given that Lawrence Speiser, the appellant above named hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of California reversing the judgment of the trial court entered in this action on April 24, 1957.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

II

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the United States Supreme Court and include in said transcript:

1. Opinion of the Supreme Court of California;
2. Clerk's Transcript of the record before the Supreme Court of California;
3. This Notice of Appeal;

III

The following questions are presented by this appeal:

- [fol. 41] 1. Whether Section 19, Article 20 of the Constitution of the State of California, which denies

any tax exemption to advocates of the overthrow of the government of the United States by force, violence, or unlawful means and to advocates of the support of a foreign government against the United States in the event of hostilities, and Section 32 of the Revenue and Taxation Code of California which requires all applicants (organizational or individual) for property tax exemptions (with the exception of applicants for the householders exemption) to sign a declaration that they do not advocate the proscribed doctrines, on their faces and as construed and as applied, are unconstitutional in violating the due process clause of the Fourteenth Amendment and through it, the First Amendment to the United States Constitution in abridging freedom of speech and assembly in the following manner and respects:

- a) In infringing on these freedoms while bearing no reasonable relationship to the evil sought to be controlled by the enactments nor any reasonable relationship to the public welfare;
 - b) In infringing on these freedoms without any showing of a clear and present danger existing by reason of the receipt of tax exemptions by advocates of the proscribed doctrines or those who, for reason of conscience, refuse to sign a declaration that they do not advocate the proscribed doctrines;
 - c) In abridging (sic) these freedoms by imposing a prior restraint in that the language of the acts are vague and uncertain in their terms.
2. Whether the aforestated enactments, as written, construed and applied, deprive the appellant of his liberty and property without trial or hearing, accusation, confrontation, right to confrontation, right to cross-[fol. 42] examination, or the assistance of counsel; subvert the presumption of innocence and alter the rules of evidence and attain the appellant by legislative fiat, all in violation of the due process clause of the Fourteenth Amendment and the provision of Article I, Section 9, Clause 3 of the Constitution of the United States.

3. Whether the said enactments as written, construed and as applied are unconstitutional in violating the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution in imposing an unconstitutional condition upon the enjoyment of a privilege in requiring relinquishment of the right to freedom of speech and assembly as a condition for receiving a tax exemption.
4. Whether the said enactments, as written, construed and applied, violate the equal protection clause of the Fourteenth Amendment to the United States Constitution in discriminatorily denying tax exemptions to the appellant while granting them to all others in similar circumstances.
5. Whether the said enactments violate the privileges and immunities clause of the Fourteenth Amendment of the United States Constitution.
6. Whether the said enactments, as written, construed and applied, violate the equal protection clause of the Fourteenth Amendment to the United States Constitution in unreasonably and discriminatorily requiring a declaration of non-advocacy of the proscribed doctrines only for certain property tax exemptions and the corporate income tax exemptions but not for the householders and all other tax exemptions.
7. Whether the said enactments, as written, construed and as applied, regulate and restrict sedition, a subject-matter entirely within the cognizance and province of the federal government, under the Constitution [fol. 43] of the United States and which the Congress of the United States, by legislative enactments, has preempted and wholly occupied the field.

Dated this 24th day of May, 1957.

/s/ Lawrence Speiser, Appellant, Attorney at Law,
in Propria Persona, c/o American Civil Liberties
Union of Northern California, 503 Market Street,
Room 702, San Francisco 5, California.

[fol. 44] AFFIDAVIT OF SERVICE (omitted in printing).

[fol. 45] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 46] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
SF 19450

DANIEL PRINCE, Plaintiff and Appellant,

v.

CITY AND COUNTY OF SAN FRANCISCO, a municipal
corporation, Defendant and Respondent.

CLERK'S TRANSCRIPT—Filed January 16, 1956

On Appeal from Judgment of the Superior Court
of the State of California, in and for the
City and County of San Francisco

Honorable William T. Sweigert, Judge

For Appellant:

Lawrence Speiser, Staff Counsel, American Civil Liberties Union of Northern California, 503 Market Street, San Francisco 5, California, and Ralph Wertheimer 625 Market Street, San Francisco 5, California.

For Respondent:

Dion R. Holm, City Attorney, Walker Peddicord, Chief Deputy City Attorney, Robert M. Desky, Deputy City Attorney; 206 City Hall, San Francisco 2, California.

[fol. 49]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE CITY AND COUNTY OF SAN FRANCISCO

No. 440,302

DANIEL PRINCE, Plaintiff,

v.

CITY AND COUNTY OF SAN FRANCISCO, a municipal
corporation, Defendant.

COMPLAINT FOR RECOVERY OF TAXES PAID UNDER PROTEST—
Filed July 28, 1954

Plaintiff complains of defendant and alleges:

1. That the plaintiff is now and was at all times mentioned herein, a legal resident of the State of California residing in the City and County of San Francisco, State of California.

2. That defendant, City and County of San Francisco, is now and was at all times herein mentioned a body politic and corporate of and within the State of California and a duly organized and existing city and county of and within said state under and pursuant to the laws of said state.

The defendant, City and County of San Francisco, is now and was at all times mentioned a municipal corporation duly organized and existing under the laws of the state of California, having organized under a Freeholders' Charter under and pursuant to the Constitution and laws of said state.

3. That plaintiff is now and was at all times herein mentioned, the sole owner of a business known as General [fol. 50] Containers. That the situs of said business is at 1301 Harrison Street, in the City and County of San Francisco, State of California. That plaintiff is now and at all times mentioned herein, the owner of the unsecured per-

sonal property, consisting of tangible personal property and solvent credits, located at the situs of said business. That in particular, plaintiff was the owner of said personal property on noon of the first Monday in March, 1954, to wit: March 1, 1954.

4. That neither plaintiff nor his wife own property in excess of \$5000.00.

5. That on November 2, 1942, the plaintiff entered service in the Army of the United States; that on January 26, 1946, plaintiff received an honorable discharge from the Army of the United States with the rating of Technical Sergeant; that during the plaintiff's service in the Army, he served in the Chemical Warfare Section in Africa, Sicily, Europe and the Aleutian Islands.

6. That by reason of said service and pursuant to the provisions of Article XIII, Section 1 $\frac{1}{4}$ of the Constitution of California, plaintiff is entitled to the property tax exemption therein provided up to the amount of \$1000.00.

7. That heretofore, and for the fiscal or tax years of 1951-1952, 1952-1953 and 1953-1954, plaintiff applied for the aforesaid tax exemption and said applications were granted.

8. That on or about November 4, 1952, the Constitution of the State of California was amended to add a new [fol. 51] section numbered Article XX Section 19 which provides that no person who advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall receive any exemption from any tax imposed by the State or any other local subdivision thereof, and further authorizing the legislature to enact such laws as might be necessary to effectuate the provisions of the aforesaid section.

9. That on or about July 1, 1953, the legislature of the State of California enacted a law (Stats. 1953, Ch. 1503) adding Section 32 to the Revenue and Taxation Code of the State of California which provides that any claim

for property tax exemption must contain a declaration that the person claiming such exemption does not advocate the overthrow of the Government of the United States or the State by force or violence or other unlawful means, nor advocate the support of a foreign government against the United States in event of hostilities, and further proving that it be a felony to make such declaration knowing it to be false.

10. That on or about April 12, 1954, plaintiff filed in the office of Russell L. Wolden, the Assessor of the City and County of San Francisco, State of California, an application for property tax exemption for the fiscal or tax year 1954-1955 as required by law, which application disclosed that plaintiff was entitled to the property tax exemption afforded him as a veteran by the provisions [fol. 52] of Article XIII, Section 1 $\frac{1}{4}$ of the Constitution of the State of California.

11. That the aforesaid application for property tax exemption was in all respects duly executed except that plaintiff struck out and did not subscribe to the declaration in the said application which contained the language set forth in the aforementioned Section 32 of the Revenue and Taxation Code.

12. That plaintiff declined to execute the aforesaid declaration in connection with his application for the said veteran's property tax exemption upon the grounds that the requirement that plaintiff execute such a declaration as a condition for tax exemption as a veteran is null and void in violating both the United States and California Constitutions as is more particularly set forth hereinafter.

13. That on April 15, 1954, defendant notified plaintiff that plaintiff's claim for the aforesaid property tax exemption was denied upon the sole ground that the said application for the veteran's tax exemption did not contain the declaration as required by the aforesaid Section 32 of the Revenue and Taxation Code.

14. That subsequent thereto, in the year 1954, the Assessor of said City and County of San Francisco,

assessed for taxes for said year, all of the property aforesaid, to wit: the unsecured personal property herein above described; that said assessment and valuation upon the unsecured assessment roll for said fiscal year 1954-1955, is as follows:

[fol. 53] Total Tangible Unsecured Property	\$850.00
Solvent Credits	\$450.00

That thereafter there was levied by the public officials of said City and County of San Francisco a tax upon and against said property upon the basis of the tax rate, last fixed before the lien date for the taxes to be collected. That said tax rate was \$6.27 per \$100 assessed valuation upon the total tangible unsecured personal property and at the rate of \$.10 per \$100 valuation of solvent credits. That said tax levied against said property totaled \$53.75 consisting of \$53.30 levied at the rate of \$6.27 per \$100 assessed valuation on the tangible personal property of assessed valuation of \$850.00 and \$.45 levied at the rate of \$.10 per \$100 valuation on the solvent credits of assessed valuation of \$450.00. That the Assessor of said City and County of San Francisco demanded of plaintiff that plaintiff pay all of said tax, that said tax was entered upon the unsecured assessment rolls of said City and County of San Francisco for the fiscal year 1954-1955 as a tax and lien upon and against said personal property.

15. That thereupon on the 16th day of July 1954, plaintiff, who claimed that said assessment was void to the extent that said personal property would be exempt from taxation under the plaintiff's veteran's exemption, paid the entire tax in the amount of \$53.75 under protest to said Assessor. That said protest was in writing and specified that portion of said assessment and tax, which would have [fol. 54] been exempt under plaintiff's veteran's exemption was claimed to be void, to wit: \$1000.00 consisting of tangible personal property valued at \$850 and taxes at \$53.30 and \$150.00 of solvent credits, taxed at \$.15, leaving a total tax bill owing of \$.30. That said protest set forth the grounds upon which said claim was founded and that a copy of said protest is hereby attached, marked Exhibit "A" and is hereby referred to and made a part hereof as

though fully set forth. That the above setforth portion of said assessment was and is void for each and all of the reasons set forth in said protest as the grounds upon which plaintiff claimed in said protest the assessment was void.

16. That said assessment so levied and imposed upon said property of said plaintiff to the extent it would have been exempt under the plaintiff's veterans property exemption, is null and void. That the purported requirements of Section 19 of Article XX of the Constitution of the State of California (hereinafter referred to as the Constitutional Amendment) and Section 32 of the Revenue and Taxation (sic) (hereinafter referred to as the Oath Requirement or Oath Declaration or Loyalty Oath) on their faces and as construed and applied to the plaintiff are unconstitutional, null and void on the following grounds.

a. They violate the First and Fourteenth Amendments of the United States Constitution in abridging freedom of speech, assembly and religion without a showing of a clear and present danger.

(1) The First Amendment Freedoms can only be [fol. 55] suppressed or penalized if their exercise presents a clear and present danger.

(2) No clear and present substantive danger has been shown to exist by the granting of tax exemptions to advocates of these proscribed doctrines.

(3) They act as a prior restraint on the First Amendment freedoms in being vague and uncertain in their terms.

b. They further violate the due process clause of the Fourteenth Amendment in that they bear no reasonable relationship to the public welfare.

c. They deprive plaintiff of equal protection of the law in violation of the Fourteenth Amendment in denying him an exemption granted to all others in similar circumstances.

d. They impose an unconstitutional condition upon the enjoyment of a privilege in violation of the equal protection and due process clause of the United States Constitution's Fourteenth Amendment in requiring plaintiff to relinquish his freedoms of speech, press, assembly and religion as a condition for obtaining the veteran's property tax exemption granted to plaintiff by the Constitution of the State of California.

e. They are bills of attainder in violation of the provisions of Article I, Section 9, Clause 3 of the United States Constitution.

f. The said enactments violate the provisions of the [fol. 56] Fourteenth Amendment in the manner aforesaid in that they abridge plaintiff's immunities and privileges as a citizen of the United States.

g. Assembly Constitutional Amendment No. 1 enacted by the legislature of the State of California in 1950, which was submitted to the electorate and finally adopted as Article XX, Section 19, embraced more than one subject and therefore violated the provisions (sic) of Article IV, Section 24 of the Constitution of the State of California.

h. The Oath Requirement of Section 32 of the Revenue and Taxation Code, as written and as applied, violates the Constitution of the State of California in the following provisions thereof and in the following respects: it deprives plaintiff of his inalienable rights, Article I, Section 1; it deprives plaintiff of his liberty of conscience, Article I Section 4; it deprives plaintiff of his liberty of speech and press, Article I, Section 9; it deprives plaintiff of his right to assemble and petition, Article I, Section 10; it deprives plaintiff of his liberty and property without due process of law, Article I, Section 13; it deprives plaintiff of equal protection of the law without any reasonable basis for classification, Article I, Section 11, and 21; it constitutes a special law in violation of Article IV, Section 25, subdivisions 10, 19, 20, and 33.

i. Section 32 of the Revenue and Taxation Code further violates the California Constitution in making an unper- [fol. 57] mitted exception from the mandate of Section

19, Article XX in exempting householders from the loyalty oath requirement.

Wherefore plaintiff prays judgment against said defendants for the sum of \$53.45 together with interest from the 16th day of July, 1954 at 5% interest per annum and costs of suit; that this court adjudge and decree that said denial of plaintiff's veterans tax exemption was void, illegal, and unconstitutional and plaintiff prays for such other and further relief in the premises as may be proper and for general relief.

Dated: July 27 1954.

/s/ Lawrence Speiser, Staff Counsel American Civil Liberties Union of Northern California, 503 Market Street, San Francisco 5, California.

/s/ Ralph Wertheimer, 625 Market Street, San Francisco, California.
Attorneys for Plaintiff

[fol. 58] *Duly sworn to by Daniel Prince, jurat omitted in printing.*

[fol. 59] EXHIBIT "A" (1) TO COMPLAINT

1301 Harrison Street
San Francisco 3, Calif.
July 16, 1954

Mr. Russell L. Wolden, Assessor
City and County of San Francisco
City Hall
San Francisco, California

Attention: Mr. Kripp

Dear Sir:

Please take notice that the undersigned protests the payment of the personal property taxes assessed to him which would be exempt from taxation under the undersigned's veteran's exemption.

The undersigned is a veteran of World War II and has made a timely and proper application for a veteran's exemption. He and his wife own property valued at less than \$1,000. He is qualified in every respect for a veteran's exemption under Article XIII, Section 1½ of the California Constitution.

In his application, the undersigned struck out the loyalty oath required by Article XX of the California Constitution and Revenue & Taxation Code Section 32 on the grounds that such a requirement violates the United States and California Constitutions.

The denial of the veteran's exemption to the undersigned is null and void; and the taxes assessed to the undersigned, which would be otherwise exempt, have been illegally assessed and levied for the following reasons:

1) The Constitutional Amendment and the Oath Requirement [fol. 60] ment on their faces and as applied violate the First and Fourteenth Amendment of the United States Constitution in abridging freedom of speech and assembly without a showing of a clear and present danger.

2) The Constitutional Amendment and the Oath Requirement violate the due process clause of the 14th Amendment of the United States Constitution in that they bear no reasonable relation to the public welfare.

3) They impose an unconstitutional condition upon the enjoyment of a privilege, in violation of the equal protection and due process clauses of the 14th Amendment.

4) The Constitutional Amendment is null and void because it embraces more than one subject.

5) The loyalty oath violates many provisions of the Constitution of the State of California.

Sincerely,

Daniel Prince

[fol. 61] EXHIBIT "A" (2) TO COMPLAINT

1301 Harrison Street
San Francisco 3, Calif.
July 23, 1954

Mr. Russell L. Wolden, Assessor
City and County of San Francisco
City Hall
San Francisco, California

Attention: Mr. Kripp

Dear Sir:

I would like to append this letter to my letter of protest, mailed to you on July 16, 1954, in connection with my payment of taxes assessed to me on my unsecured personal property, by reason of the denial of the veteran's exemption to me by the Assessor's Office.

I would like to point out the typographical error appearing in the last sentence of the second paragraph. I am, of course, referring to the veteran's exemption under Article XIII, Section 1-1/4 of the California Constitution, and not Section 1-1/2 as there appears.

In addition, in case my letter of protest does not clearly set forth my protest, I am protesting that the portion of the assessment which would have been exempt under any veteran's exemption.

My total tangible personal property was assessed at \$850.00 and under the tax rate of \$6.27 per \$100.00 valuation, the tax on this property was \$53.30. My solvent credits were assessed at a valuation of \$450.00 at a tax rate of \$.10 [fol. 62] per \$100.00 of valuation for a tax of \$.45. Under my veteran's exemption, I would have been granted an exemption on \$1,000 of property so that my personal property valued at \$850.00 and a portion of the solvent credits of \$150.00 would have been tax exempt. Thus, if I had been granted my veteran's property exemption, I would have had a tax bill of \$.30 based on the \$300.00 of solvent credits above the \$1,000 exemption and at the tax rate of \$.10 per \$100.00 valuation.

Sincerely,

Daniel Prince

[fol. 63]

[File endorsement omitted]

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR
THE CITY AND COUNTY OF SAN FRANCISCO

ANSWER—Filed October 8, 1954

Comes now the defendant City and County of San Francisco, a municipal corporation, and answering the complaint of plaintiff on file herein, admits, denies and alleges as follows:

I

States that it has no information or belief upon the subject, sufficient to enable it to answer any of the allegations contained in paragraph 1 of said complaint and basing its denial on that ground, this defendant denies each and every, all and singular, generally and specifically, the allegations contained in said paragraph 1.

II

Admits each and every, all and singular, generally and specifically, the allegations contained in paragraph 2 of said complaint.

III

States that it has no information or belief upon the subject, sufficient to enable it to answer any of the allegations contained in paragraph 3 of said complaint and basing its denial on that ground, this defendant denies each and every, all and singular, generally and specifically, the allegations contained in said paragraph 3.

IV

[fol. 64] States that it has no information or belief upon the subject, sufficient to enable it to answer any of the allegations contained in paragraph 4 of said complaint and basing its denial on that ground, this defendant denies each and every, all and singular, generally and specifically, the allegations contained in said paragraph 4.

V

States that it has no information or belief upon the subject, sufficient to enable it to answer any of the allegations contained in paragraph 5 of said complaint and basing its denial on that ground, this defendant denies each and every, all and singular, generally and specifically, the allegations contained in said paragraph 5.

VI

Denies each and every, all and singular, generally and specifically, the allegations contained in paragraph 6 of said complaint.

VII

Admits that heretofore, and for the fiscal or tax years of 1952-1953 and 1953-1954, plaintiff applied for the aforesaid tax exemption and said applications were granted;

Further answering the allegations of said paragraph 7, of said complaint, this answering defendant denies each and every, all and singular, generally and specifically the allegations of said paragraph 7 except as herein specifically admitted.

[fol. 65]

VIII

Admits each and every, all and singular, generally and specifically, the allegations contained in paragraph 8 of said complaint.

IX

Admits each and every, all and singular, generally and specifically, the allegations contained in paragraph 9 of said complaint.

X

Admits that on or about April 12, 1954, plaintiff filed in the office of Russell L. Wolden, the Assessor of the City and County of San Francisco, an application for property tax exemption for the fiscal or tax year 1954-1955 upon a form, a copy of which is attached hereto as defendant's Exhibit "A"; denies that the application was in the form

required by law and further denies that plaintiff was entitled to the property tax exemption afforded him as a veteran, by the provisions of Article XIII, Section 1 $\frac{1}{4}$ of the Constitution of the State of California, or otherwise, or at all.

XI

Admits each and every, all and singular, generally and specifically, the allegations contained in paragraph 11 of said complaint.

XII

Admits each and every, all and singular, generally and specifically, the allegations contained in paragraph 12 of [fol. 66] said complaint; alleges further that the grounds cited and relied upon by plaintiff are legal conclusions that are incorrect, unsound and unfounded in law.

XIII

Admits that on April 15, 1954, defendant, acting by and through its assessor, Russell L. Wolden, notified plaintiff in a letter in answer to his letter of April 12, 1954 that the granting of veteran's exemptions is covered by State Law and cited and quoted to him therein the provisions of Section 32 of the Revenue and Taxation Code of the State of California;

Further answering the allegations of said paragraph 13 of said complaint, this answering defendant denies each and every, all and singular, generally and specifically the allegations of said paragraph 13 except as herein specifically admitted.

XIV

Admits each and every, all and singular, generally and specifically, the allegations contained in paragraph 14 of said complaint.

XV

Denies that it was the 16th day of July, 1954 when plaintiff paid the stated tax under protest and alleges, further,

that the copy of the protest referred to, marked Exhibit "A" is not a true copy in that it bears the date of July 16, 1954, an inaccurate date; alleges, further, that the plaintiff paid the stated tax under protest on the 6th day of July, 1954 and [fol. 67] that the protest referred to was dated July 8, 1954 and filed with the Assessor upon July 6, 1954, at the same time and place as the stated tax was paid;

Further answering the allegations of said paragraph 15 of said complaint, this answering defendant denies each and every, all and singular, generally and specifically the allegations of said paragraph 15 except as herein specifically admitted and denied.

XVI

Denies each and every, all and singular, generally and specifically, the allegations contained in paragraph 16 of said complaint; alleges, further, that the matters asserted in this paragraph, and all of them, are legal conclusions that are incorrect, unsound and unfounded in law.

As and for a Further, Separate and Distinct Affirmative Defense to the Complaint, defendant alleges that the said complaint does not state facts sufficient to constitute a cause of action.

As and for a Second Further, Separate and Distinct Affirmative Defense to the Complaint, defendant alleges that plaintiff did not complete his application for exemption in conformity with Section 32 of the Revenue and Taxation Code, in that he did not make the requisite declaration that he does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support [fol. 68] of a foreign government against the United States in the event of hostilities.

As and for a Third Further, Separate and Distinct Affirmative Defense to the Complaint, defendant alleges that the grounds set forth in the protest of plaintiff, and amendments thereto, to the assessment and levy complained of are, and each of them is, insufficient in law to allow recovery of the tax paid thereunder, or any part thereof; defendant further alleges that it properly retains for its own use and

benefit according to law the tax so paid, and the whole thereof.

As and for a Fourth Further, Separate and Distinct Affirmative Defense to the Complaint, defendant alleges that plaintiff has no standing to raise the issue whether Section 32 of the Revenue and Taxation Code violates the California Constitution in making an allegedly unpermitted exception from the mandate of Section 19, Article XX in exempting the householder's exemption from the loyalty oath requirement for the reason that plaintiff has not himself been nor is he a member of a class in any way, manner or degree injured by any such exception; defendant further denies that said exception is unpermitted, improper or otherwise unconstitutional.

Wherefore, defendant City and County of San Francisco prays that the plaintiff Daniel Prince take nothing by his complaint on file herein, that said defendant have judgment for its costs of suit herein incurred, and for such other and further relief as to the Court may seem proper.

Dated: October 8, 1954.

/s/ Dion R. Holm, City Attorney; /s/ Robert M. Desky, Deputy City Attorney; Attorneys for Defendant.

[fol. 70]

[File endorsement omitted]

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR
CITY AND COUNTY OF SAN FRANCISCO

STIPULATION—Filed December 3, 1954

It Is Hereby Stipulated by and between the respective parties hereto that:

1. That the plaintiff was and is a legal resident of the State of California, residing in the City and County of San Francisco, State of California, during all times pertinent to this suit.

2. That defendant, City and County of San Francisco, is now and was at all times herein mentioned a body politic and corporate of and within the State of California and a duly organized and existing city and county of and within said state under and pursuant to the laws of said state under and pursuant to the laws of said state. (sic)

The defendant, City and County of San Francisco, is now and was at all times mentioned herein a municipal corporation duly organized and existing under the laws of the state of California, having organized under a Freeholder's Charter under and pursuant to the Constitution and laws of said state.

3. That plaintiff is now and was at all times herein mentioned, the sole owner of a business known as General Containers. That the situs of said business is at 1301 Harrison Street, in the City and County of San Francisco, State of [fol. 71] California. That plaintiff is now and at all times mentioned herein, the owner of the unsecured personal property, consisting of tangible personal property and solvent credits, located at the situs of said business. That in particular, plaintiff was the owner of said personal property at noon of the first Monday in March, 1954, to wit: March 1, 1954.

4. That neither plaintiff nor his wife own property in excess of \$5000.00.

5. That the plaintiff is an honorably discharged veteran of the United States Army after service in World War II,

and fulfills all of the qualifications for property tax exemption set forth in Article XIII, Section 1 $\frac{1}{4}$ of the Constitution of the State of California.

6. That heretofore, and for the fiscal or tax years of 1952-1953 and 1953-1954, plaintiff applied for the aforesaid tax exemption and said applications were granted.

7. That on or about November 4, 1952, the Constitution of the State of California was amended to add a new section numbered Article XX, Section 19, which provides as follows:

"Notwithstanding any other provision of this Constitution, no person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall:

[fol. 72] "(a) Hold any office or employment under this State, including but not limited to the University of California, or with any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State; or

"(b) Receive any exemption from any tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State . . ."

8. That on or about July 1, 1953, the Legislature of the State of California enacted a law (Stats. 1953, Ch. 1503) adding Section 32 to the Revenue and Taxation Code of the State of California, which provides as follows:

"Any statement, return, or other document in which is claimed any exemption, other than the householder's exemption, from any property tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State shall contain a declaration that the person or organization making the statement, return, or other document does not ad-

vocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of [fol. 73] a foreign government against the United States in event of hostilities. If any such statement, return, or other document does not contain such a declaration, the person or organization making such statement, return, or other document shall not receive any exemption from the tax to which the statement, return, or other document pertains.

"Any person or organization who makes such declaration knowing it to be false is guilty of a felony. This section shall be construed so as to effectuate the purpose of Section 19 of Article XX of the Constitution."

9. That on or about April 12, 1954, plaintiff filed in the office of Russell L. Wolden, the Assessor of the City and County of San Francisco, State of California, an application for veteran's property tax exemption for the fiscal or tax-year 1954-1955 as required by law.

10. That the aforesaid applications for veteran's property tax exemption was in all respects duly executed and would have entitled plaintiff to the exemption sought except that plaintiff struck out and did not subscribe to the declaration in the said application which contained the language set forth in the aforementioned Section 32 of the Revenue and Taxation Code, to wit:

"That the applicant did not advocate the overthrow of the Government of the United States or of the State [fol. 74] of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in the event of hostilities."

11. That plaintiff declined to execute the aforesaid declaration in connection with his application for the said veteran's property tax exemption upon the grounds that the requirement that plaintiff execute such a declaration as a condition for tax exemption as a veteran is null and

void in violating both the United States and California Constitutions.

12. That on April 15, 1954, by and through Assessor Wolden, defendant notified plaintiff that plaintiff's claim for the aforesaid property tax exemption was denied upon the sole ground that the said application for the veteran's tax exemption did not contain the declaration as required by the aforesaid Section 32 of the Revenue and Taxation Code.

13. That subsequent thereto, in the year 1954, the Assessor of said City and County of San Francisco, assessed for taxes for said year all of the property aforesaid, to wit: the unsecured personal property herein above described; that said assessment and valuation upon the unsecured assessment roll for said fiscal year 1954-1955, is as follows:

Total Tangible Unsecured Property	\$850.00
Solvent Credits	\$450.00

That thereafter there was levied by the public officials of said City and County of San Francisco a tax upon and [fol. 75] against said property upon the basis of the tax rate, last fixed before the lien date for the taxes to be collected. That said tax rate was \$6.27 per \$100 assessed valuation upon the total tangible unsecured personal property and at the rate of \$.10 per \$100 valuation of solvent credits. That said tax levied against said property totaled \$53.75 consisting of \$53.30 levied at the rate of \$6.27 per \$100 assessed valuation on the tangible personal property of assessed valuation of \$850.00 and \$.45 levied at the rate of \$.10 per \$100 valuation on the solvent credits of assessed valuation of \$450.00. That the Assessor of said City and County of San Francisco demanded of plaintiff that plaintiff pay all of said tax, that said tax was entered upon the unsecured assessment rolls of said City and County of San Francisco for the fiscal year 1954-1955 as a tax and lien upon and against said personal property.

14. That thereupon on the 6th day of July 1954, plaintiff, who claimed that said assessment was void to the extent that said personal property would be exempt from taxation

under the plaintiff's veterans exemption, paid the entire tax in the amount of \$53.75 under protest to said Assessor. That said protest was in writing and specified that portion of said assessment and tax, which would have been exempt under plaintiff's veteran's exemption was claimed to be void, to wit: \$1000.00 consisting of tangible personal property valued at \$850 and taxes at \$53.30 and \$150.00 of solvent [fol. 76] credits, taxed at \$.15, leaving a total tax bill owing of \$.30. That said protest set forth the grounds upon which said claim was founded in which plaintiff contends that taxes assessed to the plaintiff by reason of his striking out the aforesaid declaration have been illegally assessed and levied, and plaintiff bases this contention on the grounds that Article XX of the California Constitution and the declaration required by Revenue and Taxation Code Section 32 are null and void in violating the United States and California Constitutions, as written and as applied.

15. That after this stipulation has been entered into and filed, the plaintiff shall serve and file his opening brief, within 20 days with the Superior Court. Thereafter defendant shall serve and file defendant's brief within 20 days after filing of plaintiff's opening brief. Thereafter, plaintiff may have 10 days in which to serve and file a reply brief after the filing of defendant's brief. By stipulation the parties may extend each of such periods for not more than 20 days, and thereafter the time may be extended only by a Judge of the Superior Court.

16. After the filing of the briefs, the cases shall be set for oral argument at the earliest possible mutually agreeable [fol. 77] time.

Dated: December 3, 1954.

/s/ Lawrence Speiser, /s/ Ralph Wertheimer, Attorneys for Plaintiff.

/s/ Dion R. Holm, /s/ Robert M. Desky, Attorneys for Defendants.

[fol. 78] [File endorsement omitted]

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR
THE CITY AND COUNTY OF SAN FRANCISCO

MEMORANDUM OPINION AND DECISION—July 25, 1955

Section 19, Article XX of our State Constitution, adopted by vote of the people in November, 1952, provides that no person who advocates the overthrow of the government of the United States, or of this state, by force or violence or other unlawful means, or who advocates the support of a foreign government against the United States in time of hostilities, shall hold any office or employment in this state or receive any exemption from any tax, either state or local. The section directs the legislature to enact such laws as may be necessary to enforce these provisions.

Under this constitutional mandate, the legislature, in 1953, enacted Section 32 of the Revenue and Taxation Code, which provides that in any statement or return in which is claimed any exemption, other than the householder's exemption, from any property tax, shall contain a declaration to the effect that the person making the statement or return does not come within the class to which exemptions are denied by the constitution.

This case arises out of the application of these provisions to a veteran's claim for the \$1,000 property tax exemption granted to veterans by the State Constitution (Art. XIII, Sec. 1 $\frac{1}{4}$).

[fol. 79] Two conditions of eligibility for this veteran's exemption have been in the constitution from the beginning of the program many years ago: one, the requirement that the applicant shall have received an honorable discharge, and, second, the requirement that the applicant be possessed of property of a value less than \$5,000. The effect of the 1952 constitutional amendment here in question is to add a third condition to eligibility.

The plaintiff, a veteran otherwise qualified, refused to make the required declaration, was denied the exemption, paid his full property tax under protest, and in this action sues for the return of an alleged overpayment.

If the constitutional restriction is otherwise valid, the requirement of an oath from the veteran as a means of establishing eligibility is appropriate and lawful. (*Chesney v. Byram*, 15 Cal. 2d, 460.) Plaintiff, however, contends that these provisions of our state law violate the First and Fourteenth amendments of the Constitution of the United States in respect to freedom of speech; also the Fourteenth Amendment in respect to due process and equal protection of the laws, and in that they constitute a bill of attainder.

It is hardly necessary to observe that we are here concerned, not with the political, sociological or moralistic arguments pro and con concerning oath requirements, nor with the debatable practical value of such requirements, but only with the legal aspects of a situation presented [fol. 80] because the people and the legislature have resolved and foreclosed debate by their enactment (sic) of the requirement into the law.

Statutory requirements for declarations similar in principle to those here involved, and often considerably broader, have been upheld during recent years by the Supreme Court of the United States and the courts of this and other states.

They have been upheld as applied to:

Federal employees (*Bailey v. Richardson*, 341 US 918 (1950));

State employees (*Pockman v. Leonard*, 39 Cal. 2d 676 (1952));

County employees (*Steiner v. Darby*, 88 Cal. App. 2d 481 (1948));

Municipal employees (*Garner v. Bd. Pub. Wks.*, 341 US 716 (1951), affirming *Garner v. Bd. Pub. Wks.*, 98 Cal. App. 2d 493 (1950));

Public school teachers (*Adler v. Bd. of Ed.*, 342 US 485 (1952); see also, *Steinmetz v. Bd. etc.*, Cal. Supreme Ct., 7/5/55);

Labor union officials (*American Comm. Assoc. v. Douds*, 339 US 382 (1950));

Candidates for public office (*Gerende v. Bd. of Supervisors*, 341 US 56 (1951); *Shub v. Simpson*, 76 Atl. 2d 332 (Md. 1950);

Political parties (*Communist Party v. Peek*, 20 Cal. 2d 536 (1942); *Field v. Hall*, 143 S.W. 2d 567 (Ark. 1940);

Applicants for admission to the bar (*Re: Summers*, 325 US (1944); see also, *Cohen v. Wright*, 22 Cal. 293);

Voters (*Opinion of the Justices*, 40 So. 2d 849 (Ala. 1949); see also *Rison v. Farr*, 87 Am. Dec. 52 (Ark.); *Davis v. Beason*, 133 US 333);

[fol. 81] Applicants for state unemployment benefits (*Dworken v. Collopy*, 91 NE 2d 564 (Ohio 1950); *State v. Hamilton*, 110 NE 2d 37);

Re employees in essential industries (See *Lockheed v. Sup. Ct.*, 28 Cal. 2d 481; *Black v. Cutter Lab.*, 43 Cal. 2d 788 (1955);

Applicants for public housing (*Peters v. N.Y. Housing*, 128 NYS 2d 112 (N.Y. 1954; *Rudder v. U.S.* (Mun. Ct. App., D.C., 105 A. 2d 741 (1954). (See: C.C.A. 7-21-55).

Most of the relatively few authorities invalidating such declaration requirements will be found to have turned upon the point that the particular declaration was ambiguous in respect to scienter, or in some respect distinguishable from the declaration here involved. (See *Wieman v. Updegraff*, 344 US 183; *US v. Schneider*, 45 Fed. Supp. 840; *Chicago Housing v. Blackman*, 122 NE 2d 522 (1954), or upon the ground that other statutory oath requirements were exclusive. (See *Tolman v. Underhill*, 103 Cal. App. 2d 195 (superceded (sic) in 39 Cal. 2d 708); *Imbrie v. Marsh*, 71 A. 2d 35 (N.J. 1950).

Only two minority cases are sufficiently in point to require comment for the purpose of distinguishing them from the situation involved in the pending case. These two cases, (*Danskin v. San Diego Unified School Dist.*, 28 Cal. 2d 536 (1946) and the recent case of *Lawson v. Housing Authority*, 70 NW 2d 605, will be hereafter noted.

This overwhelming weight of authority upholding these [fol. 82] declaration requirements is invariably rested upon the established principle that government, having an inherent right to protect itself from subversion by force,

violence or other unlawful means, can take such legislative action as is reasonably designed to prevent the eventual success of such subversive conduct. Upon this principle both our federal and state governments have enacted laws making advocacy of governmental overthrow by force and violence a criminal offense and punishable as such. (Criminal Syndicalism Act of California, constitutionality affirmed in *Whitney v. Calif.*, 274 U.S. 357; *People v. Steelik*, 187 Cal. 361; The federal Smith Act, 54 U.S. Stat. 670; Chap. 439 (18 USC Sec. 2385), constitutionality affirmed in *Dennis v. U. S.*, 341 US 494 (1951).

• In its most recent decision, *Dennis v. U. S.*, supra, the United States Supreme Court, reviewing its own earlier decisions in this field of law, has considered the origin, development and meaning of the "clear and present danger" rule in the light of realities occurring during recent years within and beyond our borders, and has concluded that this rule requires only that the court in each case determine "whether the gravity of the evil, discounted by its improbability, justifies any speech abridgment necessarily involved in the legislation before it."

In the *Dennis* case, involving prosecution of Communist defendants under the Smith Act, the court specifically held that it was proper for the trial judge (Judge Medina) to [fol. 83] instruct the jury that if the defendants in fact advocated governmental overthrow by force and violence, not in the sense of mere abstract doctrine, but in the sense of active advocacy, then, as a matter of law, there was danger sufficiently clear and present to justify application of the statute, notwithstanding the freedom of speech provisions of the First amendment of the federal constitution.

Article XX, Section 19, of the California Constitution and Revenue and Taxation Code Section 32, involved in the pending case, impose a restriction upon the veteran's exemption which is couched in terms almost identical with the Smith Act, and, as in the *Dennis* case, the restriction must be construed to mean advocacy of government overthrow by force and violence, not in the sense of mere discussion or mere abstract belief or opinion, but as a matter of active advocacy equivalent to potential conduct. The present legislation is not complicated by provisions con-

OFFICE OF RUSSELL L. WOLDEN, ASSESSOR, CITY AND COUNTY OF SAN FRANCISCO
PROPERTY STATEMENT AND CLAIM FOR VETERAN EXEMPTION
STATEMENT OF PROPERTY OWNED, POSSESSED OR CONTROLLED AS OF MARCH 1, 1954

1.
2.
3.
4.
(Names of Partners)

RESIDENCE ON MARCH 1, 1954

PLACE OF BUSINESS NO.		ROOM NO.		TYPE	
EVIDENCE PRESENTED	DISCHARGE REASON	BRANCH OF SERVICE	SERIAL NUMBER	SERVICE DATES	FORM NO. APPROVED BY

REAL ESTATE OWNED INSIDE CITY AND COUNTY OF SAN FRANCISCO

ASSESSED TO	ADDRESS OR DESCRIPTION	CHOICE	VOL.	BLOCK	LOT	REAL EST.	IMPR.	V. E. APPLIED
1.								
2.								
3.								

TANGIBLE PERSONAL PROPERTY		Assessed Value	For Office Use Only	REAL ESTATE OR P. P. OWNED OUTSIDE S. F.	
HOUSEHOLD No. Rms.	Value			COUNTY	STATE
LESS: HOUSEHOLD EXEMPTION					
HOTEL APARTMENTS RENTED ROOMS					

TANGIBLE PERSONAL PROPERTY		Assessed Value	For Office Use Only	REAL ESTATE OR P. P. OWNED OUTSIDE S. F.	
HOUSEHOLD No. Rms. _____ Value _____				COUNTY _____	STATE _____
LESS: HOUSEHOLD EXEMPTION				DEED RECORDED TO _____	
HOTEL—APARTMENTS—RENTED ROOMS				DESCRIPTION _____	
No. Rooms _____ No. Apts. _____				COPY	
MERCHANDISE AND SUPPLIES					
GDS. IN WHSE.—AT					
Consigned Goods					
Equipment: Store—Office—Factory					
MONEY ON HAND (Not Savings or Checking Accts.)				COUNTY _____	STATE _____
BOATS				DEED RECORDED TO _____	
OTHER P. P.				DESCRIPTION _____	
TOTAL					
LESS: VETERAN EXEMPTION					
TOTAL TANGIBLE PERSONAL PROPERTY					
@ \$6.27 per \$100.00 Assessed Value					
INTANGIBLE PERSONAL PROPERTY					
MONEY IN COM'L BANKS					
DEBTS DUE ME (Acct's Rec.)					
TOTAL					
LESS DEBTS OWED (No Notes)					
NET SOLVENT CREDITS					
LESS: BALANCE VETERANS EXEMPTION					
NET TAXABLE SOLVENT CREDITS					
● 10¢ per \$100.00 Value					
1960	1961	1962	1963	TOTAL	

TOTAL											
LESS DEBTS OWED (No Notes)											
NET SOLVENT CREDITS											
LESS: BALANCE VETERANS EXEMPTION											
NET TAXABLE SOLVENT CREDITS											
● 10¢ per \$100.00 Value											
1950	1951	1952	1953	TOTAL TAX							
Compared By		Warehouse		TOTAL V. E. GRANTED							
Appraisal Certification		Extensions Checked		Property—Outside S. F.							
Corrected By		Approved By		Personal Property—S. F.							
				Real Estate—S. F.							
R. E. ENTERED								RECEIPT NO.			
BILLED or R. E.								PAID			
COLLECT FROM											

STATE OF CALIFORNIA, } ss.
CITY AND COUNTY OF SAN FRANCISCO }

AFFIDAVIT AND CLAIM FOR EXEMPTION

I, the undersigned, hereby swear or affirm that this statement and claim is made in good faith, and is to the best of my knowledge and belief true, correct, and complete and such statement includes all property owned, possessed or controlled by me at 12 o'clock noon on Monday, March 1, 1954, and I do further claim that I am a legal resident of the State of California, that I do not own nor does my wife own, property, either taxable or non-taxable, anywhere, of the value of \$3,000 or more, and that I am eligible for exemption provided by Section 11 1/4 of Article XIII of the State Constitution because of the service described herein.

I do not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means; nor advocate the support of a foreign government against the United States in event of hostilities.

Subscribed and sworn to before me this day of 1954. VETERAN OR LEGAL SPOUSE

RUSSELL L. WOLDEN, Assessor.
By _____ Deputy

~~DEFENDANT'S EXHIBIT "A"~~

City Attorney, appearing through Walker Peddicord, Esq., Chief Deputy City Attorney, and Robert M. Desky, Esq., Deputy City Attorney, appearing for the defendant; and the matter having been submitted on a Stipulation of Facts, filed with the Court on December 3, 1954, and briefs having been filed and the cause having been orally argued on June 1, 1955, and documentary evidence, including legislative materials, having been introduced, and the cause submitted for decision, and a Memorandum Opinion and Decision having been filed herein on July 25, 1955, and Findings of Fact having been waived in and by the Stipulation of Facts herein submitted, and Conclusions of Law having been filed herein, the Court ordered the following judgment:

It Is Hereby Ordered, Adjudged and Decreed that plaintiff recover nothing from defendant in this action.

It Is Hereby Further Ordered, Adjudged and Decreed that plaintiff is entitled to no relief in this action.

It Is Hereby Further Ordered, Adjudged and Decreed [fol. 96] that defendant recover from plaintiff its costs of suit incurred in this action, pursuant to law.

Dated: July 28th, 1955.

/s/ W. T. Sweigert, Judge of the Superior Court.

Memo of costs

\$6.50. filed

7-28-55

[fol. 97]

[File endorsement omitted]

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR
THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE OF ENTRY OF JUDGMENT—Filed July 28, 1955

To: Plaintiff above named and to Lawrence Speiser and
Ralph Wertheimer, his attorneys.

You and Each of You Will Please Take Notice that the
above court heretofore made and entered its judgment in

For Office Use Only

1953

fol. 69C1

TANGIBLE PERSONAL PROPERTY		Assessed Value			
HOUSEHOLD No. Rms. _____ Value _____					
LESS: HOUSEHOLD EXEMPTION					
HOTEL—APARTMENTS—RENTED ROOMS					
No. Rooms _____ No. Apts. _____					
MERCHANDISE AND SUPPLIES					
GDSEAL WHSE.—AT					
Consigned Goods					
FIXTURES—OFFICE EQUIP.—MACHINERY					
MONEY ON HAND (Not Savings or Checking Acct's)					
BOATS					
OTHER P. P.					
TOTAL					
LESS: VETERAN EXEMPTION					
TOTAL TANGIBLE PERSONAL PROPERTY					
@ \$5.67 per \$100.00 Assessed Value					
INTANGIBLE PERSONAL PROPERTY					
MONEY IN COM'L BANKS					
DEBTS DUE ME (Acct's Rec.)					
TOTAL					
LESS DEBTS OWED (BY ME)					
NET SOLVENT CREDITS					
LESS: BALANCE VETERAN EXEMPTION					
NET TAXABLE SOLVENT CREDITS					

LESS DEBTS OWED (BY ME)					
NET SOLVENT CREDITS					
LESS: BALANCE VETERAN EXEMPTION					
NET TAXABLE SOLVENT CREDITS					
@ 10c per \$100.00 Value					

TOTAL V.E. GRANTED 1953	
	Property—Outside S. F.
	Personal Property—S. F.
	Real Estate—S. F.

Remarks:.....

63
favor of defendant City and County of San Francisco, a municipal corporation, and against the plaintiff Daniel Prince.

Dated: July 28, 1955.

/s/ Dion R. Holm, City Attorney, /s/ Robert M. Desky, Deputy City Attorney, Attorneys for Defendant, City and County of San Francisco.

[fol. 98] [File endorsement omitted]

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR
THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE OF APPEAL—Filed September 26, 1955

To the Clerk of the Above-Entitled Court:

You will please take notice that the plaintiff herein hereby appeals to the Supreme Court of the State of California from the judgment entered herein on July 28, 1955, in favor of defendant and against plaintiff from all of said judgment.

Dated: September 26, 1955.

Respectfully submitted

Lawrence Speiser and Ralph Wertheimer, by /s/
Lawrence Speiser, Attorneys for Plaintiff.

[fol. 99] [File endorsement omitted]

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR
THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE TO CLERK TO PREPARE CLERK'S TRANSCRIPT AND
DESIGNATION OF RECORD ON APPEAL—Filed October 6, 1955

To the Clerk of the Above-Entitled Court, and to Defendant and Its Attorney:

You will please take notice that the plaintiff has appealed in the above-entitled case, and hereby requests the prepara-

are necessarily involved in active, personal advocacy of subversion.

In *Lawson v. Housing Authority*, 70 NW 2d 605, a recent Wisconsin decision invalidating an oath requirement extending to membership in various alleged subversive organizations, the court took the view that occupancy of a housing project by such a person was not a threat to the successful operation of the project. In the pending case, however, we are of the opinion that allotment of veterans' bounties to persons actively advocating subversion and treason would be destructive of the unique [fol. 90] purposes of a veterans' program.

Nor can it be fairly argued that legislation of this type is the result of some present day hysterical resort to novel restrictions upon personal liberty.

Aside from the recent decisions of the Supreme Court of the United States and of our own state, it should be noted that in 1863 our state Supreme Court, in *Cohen v. Wright* (22 Cal. 293) cited supra, held that a statutory requirement for a similar loyalty oath as a condition to the use of the courts, not only by attorneys but by litigants as well, was constitutional and valid in all respects. In 1889 the Supreme Court of the United States considered legislation similar in principle, and in *Davis v. Beason*, 133 US 333, 346, opinion written by Justice Field, it upheld a statute of the Idaho Territorial Legislature (which was subject to constitutional limitations) requiring that, as a condition to the exercise of the right to vote, registrants must subscribe to an oath to the effect that they did not practice, counsel or advocate bigamy or polygamy. The court held that the legislation was not subject to any legal or constitutional objection.

All of the other constitutional objections raised by plaintiff herein, e.g., due process, equal protection, bill of attainder, vagueness and uncertainty have been so consistently and clearly resolved against him in the numerous cases heretofore cited that no further discussion as to those objections is necessary.

[fol. 91] The further contention that Rev. & Tax. Code Section 32 is invalid for the reason that it applies in its terms only to property taxes (except householder's ex-

tion of clerk's transcript on appeal, which shall contain the following:

1. The judgment roll.
2. The written opinion of the Superior Court.
3. The Notice of Appeal.
4. The within notice to prepare the clerk's transcript.

No request is made for the inclusion as part of the clerk's transcript any of the briefs filed in this action in the Superior Court.

Respectfully submitted,

Dated: October 5, 1955.

Lawrence Speiser and Ralph Wertheimer, by /s/
Lawrence Speiser, Attorneys for Plaintiff.

[fol. 100] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 102] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

S.F. 19450

DANIEL PRINCE, Plaintiff and Appellant,

v.

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation,
Defendant and Respondent.

OPINION—Filed April 24, 1957

This is an appeal by the plaintiff from a judgment in favor of the defendant in an action to recover taxes paid under protest and for declaratory relief.

cerning mere "beliefs" or mere "membership" in organizations. It applies only to personal advocacy.

In the light of the *Dennis* case, the point presented in the pending case is, not whether such active advocacy presents such a "clear and present danger" as to justify its proscription, but, rather, how far a legislature (or, as in this case, an electorate) may go, beyond direct criminal proscription of such advocacy, in an attempt to prevent or frustrate its success.

That mere direct criminal proscription is not the limit [fol. 84] of permissible legislation is demonstrated by the authorities above cited, which uphold legislation requiring various loyalty declarations as a condition to certain public employments and certain political activities. However, such legislation is not necessarily limited to placing restrictions upon public employments and political activities. If a legislature finds that in fact other situations exist wherein such subversive advances will occur unless similar restrictions are imposed it should have the power to impose them. The ruling principle is the test, rather than any particular factual situation, and the rule, and the reasons therefor, are broad enough to comprise situations other than public employments and political activities.

This brings us to the question whether entitlement to a veteran's exemption presents such a situation. In our approach to this question we may assume that there may be many situations wherein, although a possibility of subversive mischief exists, the evil must be discounted by its improbability to such extent as to negate any justification, even for restriction upon criminal advocacy of subversion. We may even withhold approval, for purposes of argument, from those authorities which have upheld such restrictions as applied to the receipt of unemployment and housing benefits. We may also assume that the restrictions imposed by the constitutional and statutory provisions involved in the pending case could not be validly applied to other tax exemptions differing in kind and purpose from [fol. 85] the veteran's tax exemption here involved.

The underlying purpose of the public policy of granting tax exemptions and other benefits to veterans has been considered and specifically stated by the Supreme Court of California in cases involving the legality of such grants.

emptions) and does not extend to other kinds of taxes that would be within the coverage of the broader constitutional provision, must also be resolved against plaintiff.

Article XX, Section 19, of the Constitution is clearly self-executing and is enforceable in the courts to its full extent even without legislation, notwithstanding its direction to the legislature to enact such laws as may be necessary for its enforcement. (See *Peo. v. Western Air Lines*, 42 Cal. 2d 621, 637-8; *Chesney v. Byram*, supra; *Sutter v. City Council of Sacramento*, 64 Cal. App. 2d 1, 4.) Revenue & Taxation Code Section 32 is merely a permissible procedural statute, requiring that in the case of claims for the exemption in respect to certain types of property taxes—certainly a reasonable classification—a declaration must be filed as a means of establishing eligibility. (See *Chesney v. Byram*, supra.)

The facts of this case having been the subject of stipulation, it is ordered that defendant prepare conclusions of law and an appropriate judgment for defendant in accordance herewith.

Dated: July 25th, 1955.

/s/ W. T. Sweigert, Judge.

[fol. 92] [File endorsement omitted]

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR
THE CITY AND COUNTY OF SAN FRANCISCO

CONCLUSIONS OF LAW—Filed July 28, 1955

The above entitled cause came on regularly for trial on the 3rd day of December, 1954, before the Court sitting without a jury, Lawrence Speiser, Esq., and Ralph Wertheimer, Esq., appearing for the plaintiff, and Dion R. Holm, Esq., City Attorney, appearing through Walker Peddicord, Esq., Chief Deputy City Attorney, and Robert M. Desky, Esq., Deputy City Attorney, appearing for the plaintiff; and the matter having been submitted on a Stipulation of Facts, filed with the Court on December 3, 1954, and briefs

In *Veterans Welfare Board v. Riley*, 188 Cal. 607, 611 (1922) the court said: "The payment of a pension or a bonus for past services showing the gratitude of the people, showing that the state is mindful of those who have made sacrifices for it, is an incitement to patriotism and an encouragement to defend the country in future conflicts."

In *Allied Architects v. Payne*, 192 Cal. 431, 439 (1923), the court said: "While it is true that the return anticipated is incorporeal and intangible, it is nevertheless a very vital and valuable return to the state. The promotion and promulgation of patriotism upon which the state must rely for its own self-preservation is in truth and in fact a good consideration for the thing granted by the state and justifies the extending the bounty of the state."

In *Board of Directors v. Nye*, 8 Cal. App. 527, 541, (1908) the court said: "Nor is it to be said that such legislation is altogether in the nature of compensation for services performed . . . I think that those who performed that extraordinary service for the government constitute a class, distinguished by a line clearly segregating them, not only from the general body of the people, but also from that other class entitled to be cared for, supported [fol. 86] and maintained at the public expense."

These authorities make clear that veteran programs are directed to and subserve a specific, important and unique public purpose over and beyond the incidental, tangible benefits enjoyed by any individual veteran. Their aim is held to be "the promotion and promulgation of patriotism upon which the government must rely for its own self-preservation." Only because they are thus purposed are they legally justifiable. Considered in their relation to possible governmental subversion by violence or other unlawful means, they are just as much designed as instrumentalities to forestall any such tendency as are, for example, a police department or the FBI. Only the method is different. The veteran program takes a positive, constructive approach, while the other must necessarily be negative, combative, restrictive.

Considered in this light, a veterans' program constrained to include within its bounty persons actively advocating

The plaintiff is a veteran of World War II and as such filed applications for and obtained tax exemptions from the defendant city and county for the tax years 1951-1952, 1952-1953 and 1953-1954, pursuant to the provisions of section 11 $\frac{1}{4}$ of article XIII of the Constitution. That section provides in its pertinent parts as follows: "The property to the amount of \$1,000 of every resident of this State who has served in the Army, Navy, Marine Corps, Coast Guard [fol. 163] or Revenue Marine (Revenue Cutter). Service of the United States (1) in time of war, or (2) in time of peace, in a campaign or expedition for service in which a medal has been issued by the Congress of the United States, and in either case has received an honorable discharge therefrom, ... shall be exempt from taxation ..."

On November 4, 1952, the Constitution was amended to add section 19 of article XX limiting the veterans' tax exemption, as well as other tax exemptions, to those otherwise entitled who do not advocate the overthrow of the federal or state government by force and violence or the support of a foreign government in the event of hostilities against the United States, and authorizing implementation by legislation to effectuate the provisions of the constitutional amendment. Accordingly, on July 1, 1953 (Stats. 1953, ch. 1503, §1, p. 3114) section 32 was added to the Revenue and Taxation Code providing that applications for tax exemptions must contain an oath as specified by that section. The constitutional amendment and the implementing legislation are the same as those set forth and considered in the opinion of this court in *The First Unitarian Church of Los Angeles v. County of Los Angeles*, ante, p. —.

On April 12, 1954, the plaintiff filed in the office of the assessor of the defendant city and county an application for a property tax exemption for the tax year 1954-1955. The application form furnished by the assessor contained, [fol. 104] for the first time, the non subversive affidavit required by section 32 of the Revenue and Taxation Code. The plaintiff failed and refused to sign the application containing the oath. Facts were stipulated to which otherwise appear to entitle the plaintiff to the exemption. The application was denied. The plaintiff paid the tax under protest

having been filed and the cause having been orally argued on June 1, 1955, and documentary evidence, including legislative materials having been introduced, and the cause submitted for decision, and a Memorandum Opinion and Decision having been filed herein on July 25, 1955, and Findings of Fact having been waived in and by the Stipulation of Facts herein submitted, the Court now makes its conclusions of law as follows:

CONCLUSIONS OF LAW

I

That upon the Stipulation of Facts herein the plaintiff is not entitled to recover.

II

That plaintiff should take nothing by his complaint on [fol. 93] file herein.

III

That plaintiff is not entitled to any relief in this action.

IV

That Article XX, Section 19, of the Constitution of the State of California is constitutional under both the United States Constitution and Constitution of the State of California, valid and applicable to plaintiff herein.

V

That Section 32 of the Revenue and Taxation Code of the State of California is constitutional under both the United States Constitution and the Constitution of the State of California, valid and applicable to plaintiff herein.

VI

That Article XX, Section 19, of the Constitution of the State of California is independently self-executing and directly applicable to plaintiff herein.

subversion by force and violence, and support of enemies in time of hostilities, would be stultified, devitalized and defeated in its unique purposes.

Who can say that a veterans program in such sorry condition would not be in the long run more destructive of patriotic standards, more conducive to widespread cynicism, and more of a menace to governmental survival than would be the presence of some advocate of subversion in a lowly, relatively unimportant public clerkship? [fol. 87] Yet that clerk can be, and is, required to take his loyalty oath. It is, therefore, an oversimplification of the issue to merely ask: "What harm can result from allowing a few such advocates to enjoy a veteran's tax exemption?". Subversion can be as effectively advanced from psychological as from tactical causes.

The prevention of any such subversive advance must be deemed to have been the reason for the enactment by the people and the legislature of the provisions in question, at least in so far as they are applicable to the veterans' tax exemption program.

Precedent for such reasoning and policy may be found in the provisions of the federal veterans programs enacted by the Congress. Sec. 28 USCA, sec. 728, provides that the director of the Veterans Administration may forfeit the benefits of any veteran found by him to be guilty of treason, sabotage, or rendering assistance to an enemy.

It should be added that a veteran's exemption or other veteran's benefit is not a matter of natural or constitutional right. It is a privilege; and, although neither the electorate nor the legislature may impose discriminatory or otherwise invalid conditions within the limits of the privilege, certainly they may attach such conditions, applicable to all who seek to enjoy it, as are reasonably necessary to effectuate the purpose of the privilege or to prevent its frustration. (See *Hamilton v. U.S.*, 293 US, 245.)

Therefore, having in mind the unique purpose of the [fol. 88] veterans' exemption laws, and in view of the substantial reasons implicit in the legislation here involved, and in the further light of the presumption of its validity, it cannot be held as a matter of law that "the gravity of the evil, discounted by its improbability" is

and commenced this action to recover the same. He claims that he is entitled to the exemption without compliance with the constitutional amendment and the statutory enactment passed in pursuance thereof. He contends that section 19 of article XX of the Constitution and section 32 of the Revenue and Taxation Code violate provisions of the state and federal Constitutions. In support of his contentions he argues that the provisions of our state law infringe upon various aspects of freedom of speech; that because section 32 of the Revenue and Taxation Code does not apply to all of those entitled to tax exemptions it constitutes special legislation and he is denied due process and equal protection of the law, and that it fallaciously infers that those who do not sign the oath engage in the prohibited advocacy. It is also urged that the constitutional amendment is void because it embraces more than one subject.

In the case of the First Unitarian Church of Los Angeles v. County of Los Angeles, ante, p. —, this court declared the purposes of the constitutional amendment and its implementing legislation as applied to churches and held both enactments to be valid. The same reasons and conclusions apply to tax exemption claims by veterans provided for in section 11 $\frac{1}{4}$ of article XIII of the Constitution. Veterans traditionally have been selected by the states and by the nation for numerous special bounties and benefits. These are said to be, in part at least, in consideration for services in the public interest and welfare and as encouragement to others to follow their example. (See Allied Architects' Assn. v. Payne, 192 Cal. 431; Veterans' Welfare Board v. Riley, 188 Cal. 607, 611.) In the case of The First Unitarian Church of Los Angeles v. County of Los Angeles, above referred to, it was held that the pursuit of such objectives by the state through the means employed in the constitutional amendment and implementing legislation does not in any way violate the right of free speech; that the classifications imposed are reasonable and proper; that they do not violate any constitutional provision, and that the oath requirement of section 32 of the Revenue and Taxation Code is valid. That case is controlling here. The further contention that section 32 fallaciously infers that those who do not subscribe to the oath engage in the pro-

VII

That in failing to execute the declaration, pursuant to the above provisions, that he does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means, nor advocate the support of a foreign government against the United States in the event of hostilities, plaintiff has not qualified under the above provisions for any [fol. 94] tax exemption as a veteran, in that he has not shown himself to be a person entitled to receive the said exemption.

VIII

That plaintiff is not entitled to the tax exemption claimed.

IX

That defendant properly retains for its own benefit, according to law, the tax paid to it, and the whole thereof, without exemption or deduction on any ground of protest asserted by plaintiff.

X

That defendant should have judgment for its costs of suit herein incurred.

Dated: July 28th, 1955.

/s/ W. T. Sweigert, Judge of the Superior Court.

[fol. 95] [File endorsement omitted]

IN SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR
THE CITY AND COUNTY OF SAN FRANCISCO

JUDGMENT AFTER TRIAL BY COURT—July 28, 1955

The above-entitled cause came on regularly for trial on the 3rd day of December, 1954, before the Court sitting without a jury, Lawrence Speiser, Esq., and Ralph Wertheimer, Esq., appearing for the plaintiff, and Dion R. Holm, Esq.,

insufficient to justify whatever abridgment of speech, if any, is necessarily involved in the requirement of Const. Art. XX, Sec. 19, and Rev. & Tax. Code Sec. 32.

These enactments come to the courts "encased in the armour of previous legislative deliberation" (*Amer. Comm. v. Doubs, supra*). It is presumed that the electorate and the legislature made inquiry to determine whether there was an evil to be remedied and that the enactments were based on the result of such inquiry. (*Re: Livingston*, 10 Cal. 2d 730.) All presumptions and intendments favor the validity of a statute, and mere doubt does not afford sufficient reason for a judicial declaration of invalidity. Statutes must be upheld unless their unconstitutionality clearly, positively and unmistakably appears. *Lockheed v. Sup. Ct.*, *supra*, at p. 484; *Cohen v. Wright*, *supra*, at p. 316-318. These guiding principles are particularly applicable in a court of first instance.

The case of *Danskin v. San Diego*, 28 Cal. 2d 536 (1946), relied upon in *Speiser v. Randall*, No. 6060 Superior Court of Contra Costa County (2-9-55), and also strongly relied upon by plaintiff herein, is, in our opinion, quite distinguishable. There the Civil Liberties Union applied [fol. 89] for the use of a school auditorium for a meeting on the general theme of "The Bill of Rights in Post-War America", featuring well-known speakers. The school board, pursuant to a provision of the Education Code, withheld its permission for such use unless the applicants subscribed an oath to the effect that they did not advocate, and were not affiliated with any organization which advocated, government overthrow by force or violence. The court very properly held that the statute was not directed against the advocacy of revolutionary doctrines, but would have suppressed speech and assembly on any subject (italics ours) by the advocates of such doctrines or by those who were even merely affiliated with such advocates (p. 545).

In the pending case the declaration requirement will not have the effect of preventing or limiting advocates of subversion from exercising their constitutional right to assemble and speak on permissible subjects, nor does it at all affect any speech or assembly rights except such as

hibited activity is without merit. The Legislature may properly require that a claimant perfect his application for a property tax exemption by compliance with reasonable regulations in implementation of section 11 $\frac{1}{4}$ of article XIII [fol. 106] of the Constitution. (*Chesney v. Byram*, 15 Cal. 2d 460, 465.) Finally the plaintiff's contention that the constitutional amendment violates section 24 of article IV of the Constitution, which provides that "Every act shall embrace but one subject, which subject shall be expressed in its title", is also without merit. Article IV of the Constitution deals with the "Legislative Department" and section 24 is intended to be and has been limited to legislative enactments under the Constitution: (See *McClure v. Riley*, 198 Cal. 23, 26; *Ex parte Haskell*, 112 Cal. 412, 421.)

No good reason appears why veterans should not be required to comply with the same reasonable regulations and conditions provided by section 32 of the Revenue and Taxation Code as are applied to all other included tax exemption claimants.

The judgment is affirmed.

Shenk, J.

We Concur: Schauer, J., Spence, J., McComb, J.

[fol. 107]

DISSENTING OPINION

For the reasons stated in my dissenting opinion in *First Unitarian Church v. County of Los Angeles*, ante p. —, I would reverse the judgment.

Traynor, J.

I Concur: Gibson, C.J.

[fol. 108]

DISSENTING OPINION

For the reasons stated in my dissenting opinion in *First Unitarian Church of Los Angeles v. County of Los Angeles*, ante p. —, I would reverse the judgment.

Carter, J.

[fol. 109] [File endorsement omitted]

IN SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

No. S.F. 19450

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed May 27, 1957

I

Notice Is Hereby Given that Daniel Prince, the appellant above named hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of California affirming the judgment of the trial court entered in this action on April 24, 1957.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

II

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the United States Supreme Court and include in said transcript:

1. Opinion of the Supreme Court of California;
2. Clerk's Transcript of the record before the Supreme Court of California;
3. This Notice of Appeal.

III

The following questions are presented by this appeal:

- [fol. 110] 1. Whether Section 19, Article 20 of the Constitution of the State of California, which denies any tax exemption to advocates of the overthrow of the government of the United States by force, violence, or unlawful means and to advocates of the support of a foreign government against the United States in the event of hostilities, and Section 32 of the Revenue and Taxation Code of California which requires all applicants (organizational or individual) for property tax exemptions (with the exception of applicants for the householders exemption) to sign

a declaration that they do not advocate the proscribed doctrines, on their faces and as construed and as applied, are unconstitutional in violating the due process clause of the Fourteenth Amendment and through it, the First Amendment to the United States Constitution in abridging freedom of speech and assembly in the following manner and respects:

- a) In infringing on these freedoms while bearing no reasonable relationship to the evil sought to be controlled by the enactments nor any reasonable relationship to the public welfare;
 - b) In infringing on these freedoms without any showing of a clear and present danger existing by reason of the receipt of tax exemptions by advocates of the proscribed doctrines or those who, for reason of conscience, refuse to sign a declaration that they do not advocate the proscribed doctrines;
 - c) In abridging these freedoms by imposing a prior restraint in that the language of the acts are vague and uncertain in their terms.
2. Whether the aforestated enactments, as written, construed and applied, deprive the appellant of his liberty and property without trial or hearing, accusation, confrontation, right to confrontation, right to cross-[fol. 111] examination, or the assistance of counsel; subvert the presumption of innocence and alter the rules of evidence and attaint the appellant by legislative fiat, all in violation of the due process clause of the Fourteenth Amendment and the provision of Article I, Section 9, Clause 3 of the Constitution of the United States.
3. Whether the said enactments as written, construed and as applied are unconstitutional in violating the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution in imposing an unconstitutional condition upon the enjoyment of a privilege in requiring relinquishment

of the right to freedom of speech and assembly as a condition for receiving a tax exemption.

4. Whether the said enactments, as written, construed and applied, violate the equal protection clause of the Fourteenth Amendment to the United States Constitution in discriminatorily denying tax exemptions to the appellant while granting them to all others in similar circumstances.
5. Whether the said enactments violate the privileges and immunities clause of the Fourteenth Amendment of the United States Constitution.
6. Whether the said enactments, as written, construed and applied, violate the equal protection clause of the Fourteenth Amendment to the United States Constitution in unreasonably and discriminatorily requiring a declaration of non-advocacy of the proscribed doctrines only for certain property tax exemptions and the corporate income tax exemptions but not for the householders and all other tax exemptions.
7. Whether the said enactments, as written, construed and as applied, regulate and restrict sedition, a subject-matter entirely within the cognizance and province of the federal government, under the Constitution of the United States and which the Congress of the United States, by legislative enactments, has preempted and wholly occupied the field.

Dated this 24th day of May, 1957.

/s/ Lawrence Speiser, Attorney for Appellant, c/o American Civil Liberties Union of Northern California, 503 Market Street, Room 702, San Francisco 5, California.

[fol. 113] Affidavit of service (omitted in printing).

[fol. 114] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 115] SUPREME COURT OF THE UNITED STATES
Nos. 483 and 484, October Term, 1957

LAWRENCE SPEISER, Appellant,

v.

JUSTIN A. RANDALL, as Assessor of Contra Costa County,
State of California; and

DANIEL PRINCE, Appellant,

v.

CITY AND COUNTY OF SAN FRANCISCO,
a Municipal Corporation.

Appeals from the Supreme Court of the State of California.

ORDER NOTING PROBABLE JURISDICTION—November 25, 1957

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and transferred to the summary calendar with a total of one hour allowed for oral argument.

The Chief Justice took no part in the consideration or decision of these applications.